

# Bill as Introduced

HB 681-FN - AS INTRODUCED

2009 SESSION

09-0345

06/01

HOUSE BILL

***681-FN***

AN ACT

relative to aquatic resource compensatory mitigation.

SPONSORS:

Rep. E. Merrick, Coos 2; Rep. T. Russell, Rock 13; Rep. S. Merrick, Coos 2;  
Rep. Sad, Ches 2; Sen. Reynolds, Dist 2

COMMITTEE:

Resources, Recreation and Development

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ANALYSIS

This bill adds activities for which payment may be accepted by the department of environmental services for an unavoidable loss of aquatic resource functions.

.....  
Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 681-FN – AS INTRODUCED

09-0345

06/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nine*

AN ACT                   relative to aquatic resource compensatory mitigation.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 Aquatic Resource Compensatory Mitigation. Amend RSA 482-A:28, II to read as follows:

2           II. Exceeds one acre of impact for a public roadway [ø], a public utility project, **public**  
3 **transportation, or an infrastructure system** and meets the criteria for a United States Army  
4 Corps of Engineers state programmatic general permit.

5           2 Effective Date. This act shall take effect 60 days after its passage.

LBAO  
09-0345  
01/15/09

**HB 681-FN - FISCAL NOTE**

AN ACT                    relative to aquatic resource compensatory mitigation.

**FISCAL IMPACT:**

The Department of Environmental Services states this bill may increase state general fund revenue, state general fund expenditures, county expenditures and local expenditures by an indeterminable amount in FY 2009 and each year thereafter. There will be no fiscal impact on state expenditures or county and local revenue.

**METHODOLOGY:**

The Department of Environmental Services states this bill adds activities for which payment may be accepted by the Department for an unavoidable loss of aquatic resource functions. The Department states this will most likely generate one or two additional in-lieu of fee projects each year but is not able to predict which watershed, region of the state or project type that would be impacted by this bill. To the extent the State, county or local governments engage in lieu of fee projects, they would have increased expenditures. The Department states any additional workload to the Department would be minimal and could be absorbed by existing staff utilizing existing resources.

HB 681-FN - AS AMENDED BY THE HOUSE

13Jan2010... 0005h

2009 SESSION

09-0345  
06/01

HOUSE BILL            **681-FN**

AN ACT                relative to assessments for aquatic resource compensatory mitigation.

SPONSORS:            Rep. E. Merrick, Coos 2; Rep. T. Russell, Rock 13; Rep. S. Merrick, Coos 2;  
Rep. Sad, Ches 2; Sen. Reynolds, Dist 2

COMMITTEE:          Resources, Recreation and Development

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AMENDED ANALYSIS

This bill temporarily increases the percentage of certain administrative assessments related to aquatic resource compensatory mitigation.

.....

Explanation:          Matter added to current law appears in **bold italics**.  
Matter removed from current law appears [~~in brackets and struck through~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nine*

AN ACT relative to assessments for aquatic resource compensatory mitigation.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1       1 Aquatic Resource Compensatory Mitigation; Fund Established. RSA 482-A:29, II is repealed  
2 and reenacted to read as follows:

3           II. A separate, non-lapsing account shall be established within the fund into which all  
4 administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a, II shall be  
5 placed. Such account moneys shall only be used to support up to 2 full-time positions for  
6 administration of the fund and related projects. No other fund moneys shall be used for state  
7 personnel costs.

8       2 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as  
9 follows:

10           III. An administrative assessment which equals [5] 20 percent of the sum of paragraphs I  
11 and II.

12       3 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as  
13 follows:

14           III. An administrative assessment which equals [20] 5 percent of the sum of paragraphs I  
15 and II.

16       4 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:

17           II. An administrative assessment equal to [5] 20 percent of the amount in paragraph I.

18       5 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:

19           II. An administrative assessment equal to [20] 5 percent of the amount in paragraph I.

20       6 Rulemaking. Amend RSA 482-A:31, II to read as follows:

21           II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and  
22 RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river  
23 construction, or such other mitigation actions as would have been required by the department and  
24 incurred by the applicant in the absence of making such payments. An administrative assessment of  
25 [5] 20 percent of the total cost shall be added as part of the calculation method.

26       7 Rulemaking. Amend RSA 482-A:31, II to read as follows:

27           II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and  
28 RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river  
29 construction, or such other mitigation actions as would have been required by the department and  
30 incurred by the applicant in the absence of making such payments. An administrative assessment of

1 [20] 5 percent of the total cost shall be added as part of the calculation method.

2 8 Report. Amend RSA 482-A:33 to read as follows:

3 482-A:33 Report. The department shall submit an annual report by October 1 beginning with  
4 fiscal year 2006, to the fiscal committee, the chairperson of the house resources, recreation and  
5 development committee, and the chairperson of the senate environment and wildlife committee  
6 summarizing all receipts and disbursements of the aquatic resource compensatory mitigation fund,  
7 including a description of all projects undertaken *and the status of the administrative*  
8 *assessment account*. Each report shall be in such detail with sufficient information to be fully  
9 understood by the general court and the public. After submission to the general court, the report  
10 shall be available to the public.

11 9 Department Investigation. The department of environmental services shall investigate ways  
12 of compiling and providing information on known compensatory mitigation opportunities to  
13 applicants who need to compensate for unavoidable impacts by their proposed projects, as part of the  
14 wetlands permitting process. The department shall report on the results of this investigation on  
15 October 1, 2011 as part of its annual report under RSA 482-A:33.

16 10 Effective Date.

17 I. Sections 3, 5, and 7 of this act shall take effect July 1, 2012.

18 II. Section 1 shall take effect July 1, 2010 at 12:01 a.m.

19 III. The remainder of this act shall take effect July 1, 2010.

LBAO  
09-0345  
Amended 02/01/10

**HB 681 FISCAL NOTE**

AN ACT relative to assessments for aquatic resource compensatory mitigation.

**FISCAL IMPACT:**

The Department of Environmental Services states this bill, as amended by the House (Amendment #2010-0005h), will have an indeterminable fiscal impact on restricted state, county and local expenditures and revenue in FY 2011 and each year thereafter.

**METHODOLOGY:**

The Department of Environmental Services states this bill amends the aquatic resource compensatory mitigation fund by creating a separate, non-lapsing account in the fund into which all administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a,II shall be deposited. The bill increases the administrative assessment from 5 percent to 20 percent for FY 2011 and FY 2012 then decreases the administrative assessment back to 5 percent in FY 2013. The bill also allows the moneys in this separate, non-lapsing account to be used to support up to 2 full-time positions for administration of the fund and related projects. The Department states in lieu of other forms of compensatory mitigation, applicants have the option to pay into the aquatic resource compensatory mitigation fund. Since it is not a mandate to pay into the fund the Department is not able to estimate how many applications and projects will be submitted to the Department. The Department states the fiscal impact of this bill on restricted state, county, and local expenditures and revenue cannot be determined, but anticipates any fiscal impact will be minimal.

This bill does not authorize new positions.



CHAPTER 16  
HB 681-FN - FINAL VERSION

13Jan2010... 0005h

2010 SESSION

09-0345  
06/01

HOUSE BILL            **681-FN**

AN ACT                relative to assessments for aquatic resource compensatory mitigation.

SPONSORS:            Rep. E. Merrick, Coos 2; Rep. T. Russell, Rock 13; Rep. S. Merrick, Coos 2;  
Rep. Sad, Ches 2; Sen. Reynolds, Dist 2

COMMITTEE:          Resources, Recreation and Development

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AMENDED ANALYSIS

This bill temporarily increases the percentage of certain administrative assessments related to aquatic resource compensatory mitigation.

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CHAPTER 16  
HB 681-FN - FINAL VERSION

13Jan2010... 0005h

09-0345  
06/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Ten*

AN ACT relative to assessments for aquatic resource compensatory mitigation.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 16:1 Aquatic Resource Compensatory Mitigation; Fund Established. RSA 482-A:29, II is  
2 repealed and reenacted to read as follows:

3 II. A separate, non-lapsing account shall be established within the fund into which all  
4 administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a, II shall be  
5 placed. Such account moneys shall only be used to support up to 2 full-time positions for  
6 administration of the fund and related projects. No other fund moneys shall be used for state  
7 personnel costs.

8 16:2 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as  
9 follows:

10 III. An administrative assessment which equals [5] 20 percent of the sum of paragraphs I  
11 and II.

12 16:3 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as  
13 follows:

14 III. An administrative assessment which equals [20] 5 percent of the sum of paragraphs I  
15 and II.

16 16:4 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:

17 II. An administrative assessment equal to [5] 20 percent of the amount in paragraph I.

18 16:5 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:

19 II. An administrative assessment equal to [20] 5 percent of the amount in paragraph I.

20 16:6 Rulemaking. Amend RSA 482-A:31, II to read as follows:

21 II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and  
22 RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river  
23 construction, or such other mitigation actions as would have been required by the department and  
24 incurred by the applicant in the absence of making such payments. An administrative assessment of  
25 [5] 20 percent of the total cost shall be added as part of the calculation method.

26 16:7 Rulemaking. Amend RSA 482-A:31, II to read as follows:

27 II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and  
28 RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river  
29 construction, or such other mitigation actions as would have been required by the department and

CHAPTER 16  
HB 681-FN – FINAL VERSION  
- Page 2 -

1 incurred by the applicant in the absence of making such payments. An administrative assessment of  
2 [29] 5 percent of the total cost shall be added as part of the calculation method.

3 16:8 Report. Amend RSA 482-A:33 to read as follows:

4 482-A:33 Report. The department shall submit an annual report by October 1 beginning with  
5 fiscal year 2006, to the fiscal committee, the chairperson of the house resources, recreation and  
6 development committee, and the chairperson of the senate environment and wildlife committee  
7 summarizing all receipts and disbursements of the aquatic resource compensatory mitigation fund,  
8 including a description of all projects undertaken *and the status of the administrative*  
9 *assessment account*. Each report shall be in such detail with sufficient information to be fully  
10 understood by the general court and the public. After submission to the general court, the report  
11 shall be available to the public.

12 16:9 Department Investigation. The department of environmental services shall investigate  
13 ways of compiling and providing information on known compensatory mitigation opportunities to  
14 applicants who need to compensate for unavoidable impacts by their proposed projects, as part of the  
15 wetlands permitting process. The department shall report on the results of this investigation on  
16 October 1, 2011 as part of its annual report under RSA 482-A:33.

17 16:10 Effective Date.

- 18 I. Sections 3, 5, and 7 of this act shall take effect July 1, 2012.  
19 II. Section 1 shall take effect July 1, 2010 at 12:01 a.m.  
20 III. The remainder of this act shall take effect July 1, 2010.

21 Approved: May 7, 2010

22 Effective Date: I. Sections 3, 5 and 7 shall take effect July 1, 2012.  
23 II. Section 1 shall take effect July 1, 2010 at 12:01 a.m.  
24 III. Remainder shall take effect July 1, 2010.  
25

# Committee Minutes

**SENATE CALENDAR NOTICE**  
**ENERGY, ENVIRONMENT AND ECONOMIC DEVELOPMENT**

Senator Martha Fuller Clark Chairman ✓  
 Senator Amanda Merrill V Chairman ✓  
 Senator Jacalyn Cilley ✓  
 Senator Bette Lasky ✓  
 Senator Bob Odell ✓  
 Senator Jeb Bradley ✓

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
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Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

9:42 open  
 10:05 close  
**HEARINGS**

**Date: March 25, 2010**

**Thursday**

**4/1/2010**

**ENERGY, ENVIRONMENT AND ECONOMIC DEVELOPMENT      LOB 102      8:30 AM**

(Name of Committee)      (Place)      (Time)

**EXECUTIVE SESSION MAY FOLLOW**

8:30 AM	HB1609-FN	relative to current use and the land use change tax.
8:50 AM	HB1399	relative to state water pollution control and drinking water revolving loan funds, and state contributions to sewage disposal facilities.
9:10 AM	HB681-FN	(New Title) relative to assessments for aquatic resource compensatory mitigation.
9:30 AM	HB1377	permitting utilities to establish loan programs for owners of residential and business property engaging in renewable energy and energy efficiency projects.

**Sponsors:**

<b>HB1609-FN</b>			
Rep. Derek Owen			
<b>HB1399</b>			
Rep. Betsy Patten			
<b>HB681-FN</b>			
Rep. Evalyn Merrick	Rep. Trinka Russell	Rep. Scott Merrick	Sen. Deborah Reynolds
Rep. Tara Sad			
<b>HB1377</b>			
Rep. Jacqueline Cali-Pitts	Rep. David Borden	Sen. Martha Fuller Clark	

# Energy, Environment and Economic Development Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Michael Rollo, *Legislative Aide*

**RE:** Hearing report on **HB 681-FN** -An act relative to assessments for aquatic resource compensatory mitigation.

**HEARING DATE:** April 1, 2010

**MEMBERS OF THE COMMITTEE PRESENT:** Senators Fuller Clark, Merrill, Cilley, Lasky, Odell, and Bradley.

**MEMBERS OF THE COMMITTEE ABSENT:** None

**Sponsor(s):** Rep. E. Merrick, Coos 2; Rep. T. Russell, Rock 13; Rep. Sad, Ches 2; Sen. Reynolds, Dist 2

**What the bill does:** This bill temporarily increases the percentage of certain administrative assessments related to aquatic resource compensatory mitigation.

**Who supports the bill:** Sen. Reynolds, Dist. 2, Rep. Merrick, Coos 2, Rep. Almy Graf. 11, Rep. Spang, Straf. 7, Rene Peletier, NH DES.

**Who opposes the bill:** None.

**Neutral position:** None.

**Summary of testimony received:**

Rep. Merrick, Coos 2- Prime Sponsor of HB 681-FN

- Hearing called to order at 9:35am
- Rep. Merrick introduced the bill, deferred questions due to scheduling conflict.

Rep. Spang, Straf. 7

- In support.
- Program originally created for mitigation of projects under 1 acre. Has changed to cover large areas where developers can pay into mitigation fund for offset projects in other communities. The program was also expanded to cover rivers.
- The increase in the mitigation fee will ensure that the program will continue to be funded and help an already over extended department reach its goals.
- Sen. Cilley asked for clarification over the requirements of developers to participate in the program. Rep. Spang explained that participation in the program was strictly voluntary.

Rep. Almy, Graf. 11

- Appearing as Chair of the House Ways & Means Committee
- Fee increase received strong bi-partisan vote out of House committee.
- Mitigation program is a compromise between developers, environmentalists, and communities.
- The increase in fee will cover administrative costs or else the program may have to end. Rep. Almy pointed out that the costs to developers will be much higher if the program ceases to exist.
- Pointed out the importance of the sunset provision for the river portion of the program. This will allow the interested parties to re-evaluate the program in two years.
- Sen. Lasky asked for clarification as to the mitigation program. The program would be moot if an appropriate site is found within the community to offset disturbance caused by development? Rep. Almy answered in the affirmative.

Rene Peletier, NH DES

- In support.
- Voluntary program, one part of a four part process for developers to utilize.
- Noted that program is conducted on a watershed basis, so mitigation stays in the region.
- Sen. Bradley asked if developers liked the program because it offered consistency. Mr. Peletier answered yes and noted that there is a threshold for the program. DES likes to see local mitigation as a first option, but paying into the mitigation fund is a viable option as well.

Hearing was closed at 10:00am.

**Funding:** The Department of Environmental Services states this bill, **as amended by the House (Amendment #2010-0005h)**, will have an indeterminable fiscal impact on restricted state, county and local expenditures and revenue in FY 2011 and each year thereafter.

**METHODOLOGY:**

The Department of Environmental Services states this bill amends the aquatic resource compensatory mitigation fund by creating a separate, non-lapsing account in the fund into which all administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a,II shall be deposited. The bill increases the administrative assessment from 5 percent to 20 percent for FY 2011 and FY 2012 then decreases the administrative assessment back to 5 percent in FY 2013. The bill also allows the moneys in this separate, non-lapsing account to be used to support up to 2 full-time positions for administration of the fund and related projects. The Department states in lieu of other forms of compensatory mitigation, applicants have the option to pay into the aquatic resource compensatory mitigation fund. Since it is not a mandate to pay into the fund the Department is not able to estimate how many applications and projects will be submitted to the Department. The Department states the fiscal impact of this bill on restricted state, county, and local expenditures and revenue cannot be determined, but anticipates any fiscal impact will be minimal.

This bill does not authorize new positions.

**Future Action:** Senator Fuller Clark moved ought to pass on HB 1399. Seconded by Senator Cilley. Motion carried 5-0. Senator Cilley to the floor.

**MSR**

File: HB 681-FN  
Date: April 1, 2010



MLC

Date: April 1, 2010  
Time: 9:42 a.m.  
Room: LOB Room 102

The Senate Committee on Energy, Environment and Economic Development held a hearing on the following:

House Bill 681-FN (New Title) relative to assessments for aquatic resource compensatory mitigation.

Members of Committee present:                      Senator Fuller Clark  
   Senator Merrill  
   Senator Cilley  
   Senator Lasky  
   Senator Odell  
   Senator Bradley

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The Chair, Senator Martha Fuller Clark, opened the hearing on House Bill 681-FN and invited the prime sponsor, Representative Merrick, to introduce the legislation.

Representative Evalyn Merrick: Good morning, honorable Senators. How are y'all this morning? Did you park your boats outside? For the record, I am Evalyn Merrick. I represent Coos District 2, which includes Strafford, Stark, Groveton, Northumberland, Lancaster, Twin Mountain, Jefferson, Randolph, Whitefield, and Dalton. And I am here as prime sponsor. I'm here to simply introduce the bill, as I have a prior commitment I must get to. Also, the experts are sitting behind me and will be able to speak very eloquently on the bill and its merits and will be able to answer all your questions. I ask for your support. I think the bill has gone through a lot of wonderful changes and addresses the issues that initially were of concern. So, I do ask that you support it. And as I said, I apologize that I can't speak on it, but the experts are behind me...

Senator Martha Fuller Clark, D. 24: Thank you very much...

Representative Merrick: ...and they will.

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Senator Martha Fuller Clark, D. 24: ...for being here and for introducing the bill. Thank you.

Representative Merrick: Thank you so much.

Senator Martha Fuller Clark, D. 24: Representative Spang? Good morning.

Representative Judith Spang: Good morning, Madam Chair, members of the Committee. I will also be very brief. As you know, I am Judith Spang of District 7, Chair of the Resources, Recreation, and Development that has more or less spawned this in-lieu fee program; initially starting out as a program where somebody who was filling a wetland of less than an acre could take advantage of this program by paying money rather than trying to do something silly and meaningless with one acre's worth of mitigation.

Recently, the program was expanded to include ... to remove the size limitations so that, for example, if an airport came in so that there was something massive that would be required in terms of mitigation, it was going to be too large to do an actual on-the-ground thing. They could put a lot of money into a program or into a fund that could be used to fund the acquisition and protection of large and very significant wetland resources. The third step has been adding rivers to it as well as wetlands, and this is ... This has actually caused somewhat of a crisis at DES because it is placing further a burden on a department that was already having trouble keeping up with mitigation programs before the rivers were added.

I just wanted to ... Rene Pelletier from DES will speak to you about why the ... and also Representative Almy will speak to why this increase in fees is necessary to keep this program alive. I'm just here to say that it's a critical program. It is ... It's critical for the developers because they are ... instead of spending weeks, months, years trying to find a piece of land to buy, to conserve, to mitigate for wetlands disturbance or creating in restoration, wetland restoration, they are able to put money into this fund. It also enables the conservation community to evaluate and select the most important areas for conservation.

So, a developer isn't just going out and finding the guy next door and conserving his land. It's going into something that is the most important, and it ... A committee, a statewide committee, is getting together and evaluating potential areas as a grant program by watershed so that there's a much more logical way of taking this money and making sure that the absolute best is done in terms of environmental protection.

Senator Martha Fuller Clark, D. 24: Thank you.

Representative Spang: So...

Senator Martha Fuller Clark, D. 24: Senator Lasky, did you have a question?

Senator Bette R. Lasky, D. 13: Oh, no. Thank you.

Senator Martha Fuller Clark, D. 24: Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair, and thank you, Representative Spang. I'm a bit confused because the blurbs indicate this is a voluntary program. And under the Ways and Means blurb, it said everybody was happy. The developers came in support of it; the ... you know the environmentalists came in support of it; and yet, there was a minority report coming out of your committee that said we shouldn't be raising this. Can you explain this?

Representative Spang: No, I really can't explain that minority blurb, because it is voluntary. You know a developer can choose any number of ways of mitigating and, if they choose to take this option, then they are also choosing to pay the fee that will be paying for DES to get the resources, the time that it takes for them to accept the money, to get the money into the program. So, you know they ... I think it was just kind of ... It was just a generic objection to raising any fees in the state of New Hampshire.

Senator Martha Fuller Clark, D. 24: Thank you.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Martha Fuller Clark, D. 24: Senator Merrill.

Senator Amanda Merrill, D. 21: Thank you, Madam Chair. Good morning, Representative Spang.

Representative Spang: Good morning.

Senator Amanda Merrill, D. 21: I'm looking at existing language about the ARM fund. It says, "Such account money shall only be used to support up to two full-time positions for the administration of the fund and related projects." Can you speak to what "related projects" means or should I wait for Rene?

Representative Spang: I think probably Mr. Pelletier...

Senator Amanda Merrill, D. 21: Okay.

Representative Spang: ...will be able to flesh that out for you.

Senator Amanda Merrill, D. 21: Thank you.

Representative Spang: Give you illustrations.

Senator Martha Fuller Clark, D. 24: Any further questions for Representative Spang? Thank you very much. Representative Almy.

Representative Susan Almy: Thank you. I'll just provide that one copy to you.

**Please see Attachment #1 – Memorandum: Final Report on SB 65-FN.**

Representative Almy: For the record, I'm Representative Susan Almy, Grafton 11, city of Lebanon, Chair of House Ways and Means Committee. I also was one of the people involved in the *ad hoc* group that was formed to create this program a long seven years or something ago because I'm on my Conservation Commission as well as a Legislator. And this program was truly ... It was hashed out between developers and feds and environmentalists with a lot of compromises on all sides.

And the conservation commissions gave up the possibility that we might conserve land in their own town in order to preserve land in their nearby watershed that was much more important to the region. The developers said that, yes, we would much prefer to pay this kind of contribution to a development fund plus the administrative costs than to have to waste a lot more money and time - which is the most critical thing for a developer - looking for a mitigation site. And we adjusted things around the feds' requirements. I understand that they're now looking at this as a model for elsewhere.

On the explanation to why it had those two different votes, my committee is not known for being non-partisan. And we came out fifteen to two. And by that time, it was quite clear to everybody concerned that the developers would rather have this program and pay what it took than not have it. And that's the alternative, because the administrative costs of this program, at this point, are being paid for by other permits. I'm not sure which ones because DES does a lot of cross-training and people helping each other out.

But I was on the commission that was set up last summer from SB 65, which was meant to increase the administrative assessment to ten percent. It was quite clear when it got to my committee that ten percent was not anywhere near enough to cover the costs they were talking about. And so, we asked, and you agreed to put that aspect of it into a commission. Representative, now Senator, Boutin was on that, but I don't believe came to the last couple of meetings. I did keep him informed, but by that time he was campaigning. And Senator Janeway was on that commission and Representative McClammer seems to have a job commitment today on ... from the R, R, and D committee.

And we went through the costs of the program quite extensively in quite a lot of detail. And the one person that they have doing it at this point is assisted by other people in the department, and her salary is not completely paid for by the administrative assessment. So, they have to subsidize this from outside. That is not a viable option. We made it clear to the developers during the commission - in the person, mostly, of Gary Abbott - that either the program pays for itself or it closes down. And he took this away to the executive committee and then to a general meeting of the general contractors. And they discussed it and discussed the data we gave them on the costs of the program and said, "As long as we know what the costs of the program are, that we're not being charged for something else." Then their words were ... His words were, "I think that there isn't going to be any opposition."

So, we took it back. We amended 781 ... 781 - whichever bill this is - to contain the solution. And it was heard in ... 681 ... It was heard in Resources, Recreation, and Development. I believe they did not even show up. That may have bothered some of the Republicans on the committee that maybe they just didn't notice it. It came off the floor; went to my committee. As I recall, Gary didn't show up again. I would have preferred that he had, because on the floor I had stated they will have another chance to come to our committee and talk about this. But they did not show up.

This, I've said that on our floor, that they have yet another opportunity for this, which is that they don't have to use this program. If they don't use this program, it dies, because there's no money for it. And so, they've had a number of bites at the apple to say, and they've said tentatively but not specifically getting out there and taking a vote and saying, "We support this bill." But they have had many opportunities to come in, in opposition, and they have said tentative ... Gary Abbott has said tentative to us in the commission that he ... as long as they can see the costs of the program and know they aren't being gauged that they will go along with this. And that is just because it costs them a lot more not to have the program than it does to have the program.

And I think that's about ... Oh, the sunset is very important to us and to the program; that you, the Legislature in its wisdom - two years ago I think now - amended this to add in rivers. Rivers are said to cost a lot more to do. We don't know what they're going to cost. And also, we have no idea how many projects are going to be coming in. If a really large rivers project comes in, in the next year or two, they will get an excess of funds in that, that they'll be able to live off for a couple of years. If it doesn't and our current climate for building continues, they may not have quite enough to go on. It's a small number of people that use it from year to year. It's a gamble as to whether there's enough money coming in or not. And the two-year sunset is basically to look at the numbers again and see whether they're too high or too low.

We would not want to take it down on the basis of one large rivers project because, if it doesn't happen again, then we have to come back and raise it up at other times.

Senator Martha Fuller Clark, D. 24: Are there questions for Representative Almy? Yes, Senator Lasky.

Senator Bette R. Lasky, D. 13: Thank you, Madam Chair. Representative, good morning.

Representative Almy: Good morning.

Senator Bette R. Lasky, D. 13: This is all moot if there is a more direct mitigation. In other words, the first priority...

Representative Almy: Right.

Senator Bette R. Lasky, D. 13: ...is to, you know, directly mitigate it.

Representative Almy: The first step in this whole process - which is done by the woman that runs this program - is to go out and inspect possible sites in the town and see whether they're usable or not, in terms of the town, in terms of the feds, in terms of the department's criteria. And if that is not ... If there aren't any acceptable sites or it would take a long time to clear them, then they offer the option of paying.

Senator Bette R. Lasky, D. 13: So, they offer.

Representative Almy: Yeah. And this is very important to the environmentalists' side of the bargain, is that if there is something acceptable in Lebanon, for instance, I want it done in Lebanon rather than over in...

Senator Bette R. Lasky, D. 13: Exactly.

Representative Almy: ...Canaan, which has a terrific bog that we could use a bit more protection for.

Senator Martha Fuller Clark, D. 24: Thank you.

Senator Bette R. Lasky, D. 13: Thank you.

Senator Martha Fuller Clark, D. 24: Other questions? Thank you very much, Representative Almy. And the final speaker would be Rene Pelletier.

Rene Pelletier, New Hampshire Department of Environmental Services:  
Good morning, Madam Chair, members of the...

Senator Martha Fuller Clark, D. 24: Good morning.

Mr. Pelletier: Committee. For the record, I'm Rene Pelletier, the assistant director of water at DES, here to speak in favor of 681. And I think I won't need a lot of time. I think Senator (sic) Almy did a yeoman's job of explaining. Senator ... Representative Almy did a yeoman's job of explaining the bill. I think one of the key points, or a couple key points that I want to reiterate is that this, in fact, is a program that is not mandatory. You know this is one of four options and usually the latter option when people are looking at wetlands permitting, as far as mitigating for the impacts that may be derived from the project that they are looking to do.

So, what we have found over the years ... And the reason this became legislatively established in '06 was that we were mitigating for a lot of wetlands impacts with little five-, ten-acre parcels that kind of just disappeared into the sunset. Nobody was tracking them. You know nobody knew where they were. There was no significant environmental association to some larger project in the area. So, hence, the birth of the ARM fund.

Since that time, currently the ARM fund has in it somewhere around \$3 million. We have gone out to bid in the Merrimack River watershed. There was ... And again, as Senator ... Representative Almy talked about, this is done on a watershed basis. So, for instance, we went out with RFPs for the Merrimack watershed three or four months ago. And there was somewhere around \$700,000 that people could put in bids on. There is a committee that evaluates proposals for mitigation; in other words, parcels to protect in perpetuity. And that's how each of the watersheds is handled.

So, if you do something in the Coos watershed, any project that mitigates in the ARM fund that takes place in Coos, stays in Coos County; in Merrimack, stays in Merrimack. So, when you look at the nine regions, all of the mitigation stays in each region. And then people have the ability to come in with a proposal. A committee looks at those proposals, prioritizes them, and then projects move forward. So, the big concept here is the holistic approach to environmental protection and perpetuity of valuable resources in the long term.

It has been very effective. I mean, a town can come in, for example. I'll give you an example of some of the projects we see. A town can be diligent and do a statewide, town-wide survey of all of its culverts. You know they may have a lot of culverts that aren't allowing fish passage. They may have culverts that are creating impoundments that, in fact, could be a threat to public health. As a proposal in that watershed, they can come in, establish a strategy, and look to achieve some money out of this program. So, it's from nuts ... peanuts to nuts, really. It goes the whole gamut.

So, I mean, I guess that's it, shortly...

Senator Martha Fuller Clark, D. 24: Thank you.

Mr. Pelletier: ...and I'll take some questions.

Senator Martha Fuller Clark, D. 24: Are there questions for Mr. Pelletier?  
Yes, Senator Bradley.

Jeb E. Bradley, D. 3: Thank you. Good morning, Madam Chair.

Senator Martha Fuller Clark, D. 24: Good morning.

Jeb E. Bradley, D. 3: Good morning, Rene. I assume that, and just in looking at your letter, that one of the main reasons that a potential applicant would like this program is certainty of the ease of use of it as opposed to the uncertainty of some of the other mitigation projects. Is that...

Mr. Pelletier: Yeah, and I...

Jeb E. Bradley, D. 3: Am I correct in that?

**Please see Attachment #2 – letter from Department of Environmental Services.**



Mr. Pelletier: And I'll tell you what we're hearing a lot of complaints about and actually committed in the legislation to try and get towns to identify all their primetime resources that they'd like to protect but don't have the fiscal ability. But what happens currently in the past, developers will spend sometimes twenty to \$30,000 trying to find parcels that will mitigate a given project impact. Once they superficially look at that now, they can say, "Look, there doesn't seem to be anything that makes sense as far as..."

Senator Martha Fuller Clark, D. 24: Mitigation.

Mr. Pelletier: "...ecological integrity. So, we want to pay into the ARM fund." So, it generally saves them money and time.

Jeb E. Bradley, D. 3: Can they choose to do that in the first instance or do they have to...?

Mr. Pelletier: It's a threshold. They ... We like to see protection first, and the ARM fund is when they have sort of figured out they have nothing to do. And that's why we feel it's important if towns can try and identify and categorize their needs, you know? So, if you're doing the project in Wolfeboro, the town would have a list of priorities in their environmental overview, and that may be a great thing to mitigate.

Jeb E. Bradley, D. 3: So, in that case, you know ... If the future of this sort of keeps going, the responsibility is more on the town to identify projects the developer could...

Mr. Pelletier: Well, I don't think the responsibility's on the town, but I think it would behoove a town to do this. And then when the developer comes into a community, they can go right to the con-com and say, "Hey, we're doing this project. We got to mitigate for it. You have anything that you would like to pursue?" So, it's a benefit, but it's not a requirement.

Jeb E. Bradley, D. 3: Thank you.

Senator Martha Fuller Clark, D. 24: Thank you very much. Senator Merrill.

Senator Amanda Merrill, D. 21: Thank you, Madam Chair. Good morning.

Mr. Pelletier: Good morning.

Senator Amanda Merrill, D. 21: It's still morning. I would just ask again the question about what related projects means in terms of use of the funds.

Mr. Pelletier: It would be like I explained about culverts. You know it doesn't have to be purchasing a parcel in the watershed approach; anything that increases or enhances the concept of environmental integrity. And that could very well be the aquatic environment; it could be the ecosystem environment; wildlife habitat. So, it doesn't limit it to if you mitigate ... if you would fill a (sic) acre of wetlands that you have to purchase ten acres of upland. You can come in and request money, *vis-à-vis* the culverts, or purchasing, let's say, a 300 or 5,000 feet of linear shorefront on a major river that takes it out of development forever. So, it's anything associated with the environment.

Senator Amanda Merrill, D. 21: I think...

Senator Martha Fuller Clark, D. 24: Thank you.

Senator Amanda Merrill, D. 21: I think ... May I? I think my confusion was that just the phrase put that language with the phrase of administration, so I thought it was something, a project, related to administration of the program.

Mr. Pelletier: Well, and I think it...

Senator Amanda Merrill, D. 21: It's really...

Mr. Pelletier: Right.

Senator Amanda Merrill, D. 21: ...carrying out the program.

Mr. Pelletier: Yes.

Senator Amanda Merrill, D. 21: Yes.

Mr. Pelletier: It indirectly is, because anything that comes in, in this process, we have to spend a lot of staff time reviewing proposals. And in that proposal review, we talk about associated projects and priorities. So, long before it gets to the ultimate RFP process, we have to make sure that projects chosen for this make sense. So, it is ... It does go hand-in-hand.

Senator Amanda Merrill, D. 21: Yeah. Okay. Thank you.

Senator Martha Fuller Clark, D. 24: Thank you. Any other questions? Is there anyone else who would like to testify on this bill? Seeing none, I'll close the hearing.

Hearing concluded at 10:05 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marty Cote". The signature is written in a cursive style with a large initial "M" and a stylized "C".

Marty Cote  
Senate Secretary  
7/22/10

2 Attachments



State of New Hampshire

Attachment #1

GENERAL COURT

CONCORD

MEMORANDUM

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**DATE:** November 6, 2009

**TO:** Honorable John H. Lynch, Governor  
Honorable Terie Norelli, Speaker of the House  
Honorable Sylvia B. Larsen, President of the Senate  
Honorable Karen O. Wadsworth, House Clerk  
Tammy L. Wright, Senate Clerk  
Honorable Susan Almy, Chair, House Ways & Means  
Committee  
Honorable Robert Odell, Chair, Senate Ways & Means  
Committee  
Michael York, State Librarian

**FROM:** Representative Jim McClammer, Chairman

**SUBJECT:** Final Report on SB 65-FN, Chapter 303:7-11,  
Laws of 2009

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Pursuant to Chapter 303:11, Laws of 2009, enclosed please find the Final Report of the Committee to Study the Administrative Fee Percentage Under RSA 482A:30, III, RSA 482-A30-A, II, and RSA 482-A:31, II and to Recommend a New Administrative Fee Percentage Adjusted to Cover the Cost of the Program.

Should you have any questions or comments regarding this report, please do not hesitate to contact me.

cc: Committee Members  
Honorable Judith Spang, Chair, House Resources, Recreation and Development  
Committee

## **FINAL REPORT**

### **COMMITTEE TO STUDY THE ADMINISTRATIVE FEE PERCENTAGE UNDER RSA 482A:30, III, RSA 482-A30-A, II, AND RSA 482-A:31, II AND TO RECOMMEND A NEW ADMINISTRATIVE FEE PERCENTAGE ADJUSTED TO COVER THE COST OF THE PROGRAM**

**HB 65**

**Chapter 303:7-11, Laws of 2009**

**November 6, 2009**

#### **MEMBERS:**

Representative Jim McClammer (Chairman)  
Senator Harold Janeway  
Representative David Boutin  
Representative Susan Almy

#### **MEETINGS:**

September 16, 2009  
October 6, 2009  
October 27, 2009

#### **COMMITTEE DUTIES:**

The committee shall:

Study the administrative fee percentage under RSA 482-A:30, III, RSA 482-A:30-a, II, and RSA 482-A:31, II and recommend a new administrative fee percentage adjusted to cover the cost of the program.

#### **BACKGROUND:**

The Program is the Aquatic Resource Compensatory Mitigation (ARM) Program (RSA 482-A:28-33) that provides for the acceptance of payments in lieu of other forms of compensatory mitigation for an unavoidable loss of aquatic resource functions and values. This form of mitigation is commonly referred to as the "in-lieu fee option" of the "in-lieu fee program" and it is available to applicants who need to meet federal and state wetland permitting requirements. It is a discretionary option that is intended to expedite the permit process when other meaningful forms of compensatory mitigation have been difficult to identify. Attached to this report is a document, *Aquatic Resource Compensatory Mitigation*, which contains the current statutes that pertain to this program.

Payments are deposited into the Aquatic Resource Compensatory Fund (Fund) appropriated to the Department of Environmental (DES). Disbursements from the Fund are approved by the Wetland Council on recommendations provided by a site selection committee. Disbursements occur through a grants process "for costs related to wetlands creation or restoration, stream restoration, preservation of upland areas adjacent to wetlands, and the subsequent monitoring and maintenance of such areas." Attached to this report is a document, *2009 Draft Report of Activity of the Aquatic Resource Mitigation Fund Program*, which explains the grants process and summarizes the current status of the ARM Fund.

The Fund currently *may* be used to pay state personnel costs to support up to *two* full-time positions for administration of the fund and related projects. But after July 1, 2010 the Fund *may not* be used to pay personnel costs except, upon approval of the fiscal committee, to support up to *one* full-time position. Furthermore, only money from the 5 percent administrative assessment shall be used for this purpose. The administrative assessment is a percentage of the costs, set by statute and annually adjusted, that would have been required by the department and incurred by an applicant to construct wetlands or restore a stream or shoreline loss.

SB 65-FN (approved July 31, 2009) amended RSA 482-A:28 to expand the ARM Program to include wetland impact projects of any type or size, and river and stream projects. Thus, as of the effective date, September 29, 2009, river projects and *any* wetland project that requires some form of compensatory mitigation are eligible to make in-lieu fee payments to the ARM Fund if they comply with the compensatory mitigation sequence. That is: 1) the project avoids and minimizes impact to protected resources to the maximum extent practicable; and, 2) the project proponent has made a reasonable attempt to locate a meaningful establishment, restoration or preservation alternative (and none is available).

The expansion of the Program will likely increase deposits to the Fund and the number of state personnel necessary to administer the Program. So, SB 65-FN also establishes this committee to study the administrative assessment (fee) percentage that is necessary to fund state personnel costs.

### **FINDINGS:**

The committee met three times and received various presentations from the Department of Environmental Services (DES), specifically from Rene Pelletier, Water Division, Environmental Programs Administrator and Lori Sommer, DES Water Division, Mitigation Coordinator. Information was clear but inconclusive for determining the precise administrative fee.

The staff person with the current responsibility for administration of the AMR Fund was supported, in part, by a \$50,000 grant from the United States Environmental Protection Agency. That staff person currently uses up to 80% of her time to administer the program. Another part-time staff member is engaged in tracking conservation easements.

Future personnel costs associated with administration of the fund and related projects, including the grants process, have yet to be fully determined. The DES does expect the evaluation of river projects and the administration of the grants process will take more time.

With respect to the grants process, DES regulations allow for deposits into the ARM Fund to be segregated into separate accounts for each of the sixteen (16) watersheds within the state. After funds accumulate for two years in a watershed account, the funds are disbursed. In April 2009, the first watershed account advertised a request for proposals, and grants have recently been announced. Eight watershed accounts have funds, and three more have recently advertised requests for proposals.

DES estimates personnel costs of one full time position (Labor Grade 27) and one part time position (Labor Grade 21) to administer the Program would range from approximately \$100,022 in FY 2009 to approximately \$146,686 in FY 2012. Attached to this report is *Fiscal Impact – One Full Time and One Part Time Positions Calculation Worksheet*, which provides details on personnel costs to administer the Program.<sup>1</sup>

Future deposits into the ARM Fund are likely to increase as the types of projects that are now eligible (e.g., stream, river and any wetland project) to use the in-lieu fee option has expanded. But deposits may slow if the number of all permit applications continues to decrease as a result of the current economic downturn. These factors and the small number of previous applicants using the in-lieu fee option (sample size) make forecasting average yearly deposits difficult.

The average yearly deposit into the ARM fund for 2007-2009 is approximately \$635,671. Attached to this report is *Payments into the ARM Fund*, which provides details on deposits to the ARM Fund as of October 12, 2009. A 20% administrative assessment, based on this average, would generate approximately \$127,134/year. However, the DES feels that total deposits into the ARM Fund for the remainder of this year and future years will increase, and a 20% administrative assessment will be sufficient to cover projected personnel costs.

It was suggested the administrative assessment (fee) be increased from 5% to 20%, which could then be reexamined and adjusted in two years time when more data are available on deposits into the ARM fund and personnel costs of administering the Program.

Mr. Gary Abbott, Director, Association of General Contractors, discussed the proposed 20% administrative fee with members his Board of Directors and a subcommittee of his Environment Committee. He got varying responses but a general feeling that if the fee was justified by numbers they could see, it would be acceptable. The regulated community did express concern over the costs of complying with the requirement that applicants must prove other meaningful measures in the compensatory mitigation

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<sup>1</sup> Also attached to this report is *Fiscal Impact – Two Full Time Positions Calculation Worksheet*, which DES provided on November 5, 2009.

sequence are not available before they can use the in-lieu fee option. DES has assured the Committee that an attempt will be made to reduce these costs.

**RECOMMENDATIONS FOR PROPOSED LEGISLATION:**

The Committee voted to: 1) increase the administrative assessment from 5% to 20%; 2) sunset the 20% administrative assessment increase in two years, 2012; 3) establish a separate non-lapsing administrative assessment account; 4) summarize all deposits and disbursements of the administrative assessment account in the annual ARM Fund Report, due October 1 of each year; and, 5) have DES provide an Interim Report, appended to the Annual ARM Fund Report, due October 1, 2011, on its efforts to reduce costs to applicants who choose to use the in-lieu fee option and need to comply with the compensatory mitigation sequence.

The Committee recommended using HB 681-FN that has been retained in the House Resources, Recreation and Development Committee as the vehicle to implement these recommendations. Attached is a *Proposed Amendment to HB 681*, which incorporates the recommended fee increase to 20% and then returns it to 5% when the provision sunsets in 2012.

**ATTACHMENTS:**

*Chapter 303:7-11, Laws of 2009*  
*Aquatic Resource Compensatory Mitigation Statute*  
*2009 Draft Report of Activity of the Aquatic Resource Mitigation Fund Program*  
*Fiscal Impact – One Full Time and One Part Time Positions Calculation Worksheet*  
*Fiscal Impact – Two Full Time Positions Calculation Worksheet*  
*Payments into the ARM Fund*  
*Proposed Amendment to HB 681*

**Respectfully Submitted for the Committee,**

**Representative Jim McClammer, Chairman**



303:7 Committee Established. There is established a committee to study the administrative fee percentage under RSA 482-A:30, III, RSA 482-A:30-a, II, and RSA 482-A:31, II and to recommend a new administrative fee percentage adjusted to cover the cost of the program.

303:8 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, 2 from the ways and means committee and one from the resources, recreation and development committee, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

303:9 Duties. The committee shall study the administrative fee percentage under RSA 482-A:30, III, RSA 482-A:30-a, II, and RSA 482-A:31, II and recommend a new administrative fee percentage adjusted to cover the cost of the program.

303:10 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

303:11 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, the chairman of the house ways and means committee, the chairman of the senate ways and means committee, and the state library on or before November 1, 2009.

## **Current Statute Relative To Aquatic Resource Compensatory Mitigation**

482-A:28 Aquatic Resource Compensatory Mitigation. In lieu of other forms of compensatory mitigation, the department may accept payment for an unavoidable loss of aquatic resource functions and values from impacts to resources protected under this chapter.

482-A:29 Fund Established.

I. There is hereby established the aquatic resource compensatory mitigation fund into which payments made under this subdivision shall be deposited. The fund shall be a separate, nonlapsing fund continually appropriated to the department to be used only as specified in this subdivision for costs related to wetlands creation or restoration, stream and river restoration, stream and river enhancement, preservation of upland areas adjacent to wetlands and riparian areas, and the subsequent monitoring and maintenance of such areas.

II. The fund may be used to supplement the administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a, II to support up to 2 full-time positions for administration of the fund and related projects.

*[Paragraph II above replaced by paragraph II below on July 1, 2010.]*

II. The fund may not be used to pay state personnel costs except, upon approval of the fiscal committee, to support up to one full-time position for administration of the fund and related projects. Only money from the 5 percent administrative assessment collected under RSA 482-A:30, III and RSA 482-A:30-a, II shall be used for this purpose.

III. The state treasurer shall invest the fund as provided by law. Interest received on such investment shall be credited to the fund.

IV. The wetlands council, established by RSA 21-O:5-a, shall approve disbursements of the aquatic resource compensatory mitigation fund based on recommendations provided by the site selection committee established under RSA 482-A:32, and in accordance with rules adopted by the commissioner.

482-A:30 Payment for Freshwater and Tidal Wetlands Losses. For freshwater and tidal wetlands losses, the in lieu payment shall be the sum of:

I. The cost that would have been incurred if a wetland of the same type was constructed at the ratios adopted by the department based on a price of \$65,000 per acre of wetland created, to be adjusted at the beginning of the calendar year according to the annual simple rate of interest on judgments established by RSA 336:1;

II. The area of wetlands, as used in the calculation performed under paragraph I, times the cost of land in the municipality where the impact is occurring as calculated by the total assessed land values in the municipality, as determined by the department of revenue administration, which are equalized, divided by the number of acres in the municipality to yield a per acre equalized land value; and

III. An administrative assessment which equals 5 percent of the sum of paragraphs I and II.

482-A:30-a Payment for Stream or Shoreline Losses. For stream or shoreline resource losses, the in lieu payment shall be the sum of:

I. The cost that would have been incurred if a stream of the same type was restored at the ratios adopted by the department, based on a price of \$200 per linear foot of channel or bank

impacts or both, to be adjusted at the beginning of the calendar year according to the annual simple rate of interest on judgments established by RSA 336:1; and

II. An administrative assessment equal to 5 percent of the amount in paragraph I.

482-A:31 Rulemaking. – The commissioner shall adopt rules under RSA 541-A relative to:

I. Identification of appropriate situations under which in lieu payments may be made. The criteria in RSA 482-A:28 shall be the minimum requirements for projects eligible for in lieu payments.

II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river construction, or such other mitigation actions as would have been required by the department and incurred by the applicant in the absence of making such payments. An administrative assessment of 5 percent of the total cost shall be added as part of the calculation method.

III. Criteria to use in selecting projects that would compensate for the lost aquatic resource functions or values.

(a) Tidal aquatic resources shall be compensated by the selection of qualifying tidal projects.

(b) An emphasis shall be given to selecting from among the qualifying projects those that are nearer to the site of the lost aquatic resource.

(c) No project shall be funded with in lieu payments from losses that occurred outside the hydrologic unit code 8 watershed, as developed by the United States Geological Survey, in which the project is located.

(d) Such criteria shall be adopted in consultation with the site selection committee established under RSA 482-A:32.

482-A:32 Site Selection Committee Established.

I. There is established a site selection committee for the purpose of identifying projects to be funded from the aquatic resource compensatory mitigation fund.

II. The committee shall consist of the following members:

(a) The commissioner of the department of environmental services, or designee.

(b) The executive director of the fish and game department, or designee.

(c) The director of the office of energy and planning, or designee.

(d) The commissioner of the department of resources and economic development, or designee.

(e) Four members of the public, appointed by the governor and council for a term of 3 years or until a successor is chosen. The members of the public shall be as follows:

(1) A member of a municipal conservation commission at the time of appointment, who shall be one of 3 nominees submitted by the New Hampshire Association of Conservation Commissions.

(2) A natural resource scientist, who shall be one of 3 nominees submitted by the New Hampshire Association of Natural Resource Scientists.

(3) A person with experience in environmental protection and resource management at the time of appointment, who shall be one of 3 nominees submitted by the Nature Conservancy.

(4) A person with experience in environmental protection and resource management at the time of appointment, who shall be one of 3 nominees submitted by the Society for the Protection of New Hampshire Forests.

III. The members of the committee shall elect a chairperson annually.

IV. Each public member of the committee shall receive \$50 per meeting. The other members of the site selection committee shall receive no compensation other than their regular state salaries but shall receive mileage paid at the rate set for state employees.

482-A:33 Report. The department shall submit an annual report by October 1 beginning with fiscal year 2006, to the fiscal committee, the chairperson of the house resources, recreation and development committee, and the chairperson of the senate environment and wildlife committee summarizing all receipts and disbursements of the aquatic resource compensatory mitigation fund, including a description of all projects undertaken. Each report shall be in such detail with sufficient information to be fully understood by the general court and the public. After submission to the general court, the report shall be available to the public.

**2009 REPORT OF THE ACTIVITY OF THE  
NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES  
AQUATIC RESOURCE MITIGATION FUND PROGRAM**

**December 31, 2009**

**I. INTRODUCTION**

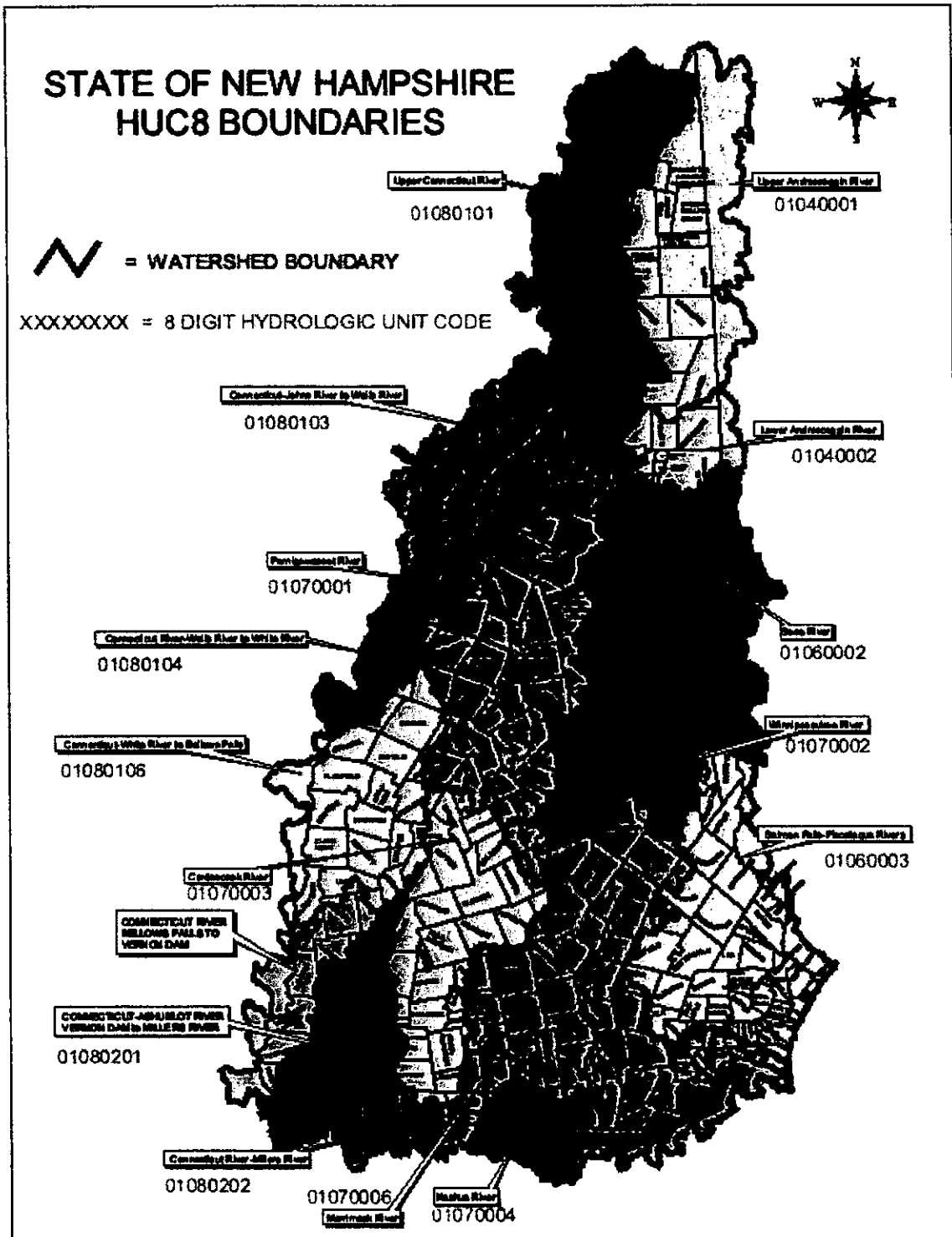
The Aquatic Resource Mitigation (ARM) Fund has been created as one of several compensatory mitigation options available to applicants for impacts to wetlands and other aquatic resources. This mitigation option is available for use after avoidance and minimization of impacts to these aquatic resources has been achieved. Although compensatory mitigation is often a requirement in permits, use of the ARM Fund can only occur after the applicant has reviewed other available forms of mitigation in the vicinity and local community. The ARM Fund seeks "no net loss" of aquatic resource acreage and functions using a watershed approach. See Figure 1 for the Hydrologic Unit Code 8 (HUC 8) display of the watersheds that is used for collection of funds.

The DES regulations allow for the funds in each watershed account to accumulate for two years after the first deposit into each account. After two years have lapsed, the funds are advertised in a request for proposals for disbursement. In April, 2009 the first watershed to be advertised for release was the Merrimack River Watershed with \$650,000.00 available. This report outlines the results of the first ARM Fund disbursement. Summaries of the wetland impacts, wetland functions and values lost, and accruals in each of the HUC 8 accounts that have accumulated funds are also noted. The purpose of this report is to advise the public of the status of the ARM Fund and to address items referenced in the DES regulations, Env-Wt 807.19, specifically:

- (1) A summary that details the sources of all payments received and all fund expenditures on a per-watershed basis;
- (2) A description of each project funded and information on the progress or completion of those projects;
- (3) The acreage and type of aquatic resource restored, created, or otherwise protected in each HUC 8 watershed by the projects; and
- (4) The functions gained by the projects.

The last section of this report highlights program achievements made by the mitigation program over the 2009 calendar year.

**FIGURE 1. STATE OF NEW HAMPSHIRE HYDROLOGIC UNIT CODE 8 BOUNDARIES**



## II. WETLAND LOSS AND CONTRIBUTIONS RECEIVED

During the 2009 calendar year, 12 projects used the payment option as mitigation for permitted wetland impacts. The 12 permitted projects resulted in 6.02 acres of wetland loss. For these wetland impacts, the Fund accrued contributions totaling \$785,263.64. The impacts, contributions, functions and values impacted by projects that generated funds in calendar year 2009 are shown below. The totals for the 8 watersheds that have had deposits since 2007 are also noted, with the proposed release dates for each account.

### ARM FUND REVENUES, IMPACTS AND FUNCTION AND VALUES LOST CALENDAR YEAR 2009

#### **UPPER CONNECTICUT RIVER WATERSHED** **Request for Proposal sent out September, 2009**

<b>DES PERMIT LOCATION, FILE #</b>	<b>IMPACTS (in acres)</b>	<b>FUNCTIONS &amp; VALUES LOST</b>	<b>REVENUES</b>	<b>DATE PERMIT ISSUED</b>
<b>Colebrook, 2005-2313</b>	0.51	Floodflow alteration, wildlife and fish habitat, flood storage, sediment/nutrient filtering.	\$52,933.59	2/18/2009
<b>CURRENT TOTAL FOR WATERSHED</b>	<b>1.5</b>		<b>\$156,159.59</b>	

#### **UPPER ANDROSCOGGIN RIVER WATERSHED – Release October 2010**

<b>DES PERMIT LOCATION, FILE #</b>	<b>IMPACTS (in acres)</b>	<b>FUNCTIONS &amp; VALUES LOST</b>	<b>REVENUES</b>	<b>DATE PERMIT ISSUED</b>
<b>CURRENT TOTAL FOR WATERSHED</b>	<b>0.61</b>		<b>\$63,110.55</b>	

#### **PEMIGEWASSETT RIVER WATERSHED – Release June 2010**

<b>DES PERMIT LOCATION, FILE #</b>	<b>IMPACTS (in acres)</b>	<b>FUNCTIONS &amp; VALUES LOST</b>	<b>REVENUES</b>	<b>DATE PERMIT ISSUED</b>
<b>Lincoln, 2008-807</b>	0.61	Storm water channel - manmade	\$64,812.14	4/20/2009
<b>CURRENT TOTAL FOR WATERSHED</b>	<b>1.4</b>		<b>\$147,044.11</b>	

**CONNECTICUT RIVER from JOHNS RIVER TO WAITS RIVER  
Request for Proposal sent out September, 2009**

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
Jefferson, 2008-1529	0.004	Wildlife habitat; Recreation	\$503.51	3/24/2009
Littleton, 2008-2762	0.30	Groundwater discharge, wildlife habitat	\$32,505.59	3/27/2009
Dalton, 2008-1332	0.29	Wildlife habitat	\$30,357.77	4/13/2009
Whitefield, 2008-1333	1.85	Groundwater discharge and wildlife habitat	\$90,000.00	5/12/2009
<b>CURRENT TOTAL FOR WATERSHED</b>	<b>3.06</b>		<b>\$198,175.54</b>	

**WINNIPESAUKEE RIVER WATERSHED  
Request for Proposal sent out September, 2009**

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
<b>CURRENT TOTAL FOR WATERSHED</b>	<b>1.08</b>		<b>\$161,466.73</b>	

**SALMON FALLS RIVER – PISCATQUA RIVER WATERSHED – August 2010**

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
Lee, 2006-2733	0.55	Wildlife habitat	\$68,374.50	2/5/2009
Seabrook, 2008-1264	0.37	Groundwater recharge/discharge, floodflow alteration, nutrient rem/retention, wildlife habitat	\$57,198.96	6/8/2009
Durham, 2009-593	0.37	Roadside swales with limited function and values	\$14,653.53	8/19/2009
Hampton, 2009-937	0.55	Sediment/toxicant retention	\$95,766.77	10/7/2009
<b>CURRENT TOTAL FOR WATERSHED</b>	<b>2.69</b>		<b>\$374,601.88</b>	



**MERRIMACK RIVER WATERSHED  
Awards to 4 Projects Issued August, 2009**

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
Bow, 2008-2312	0.4	Stormwater detention of runoff from existing site	\$78,157.28	1/26/2009
Manchester, 2006-3219			\$200,000.00	2/19/2009
<b>CURRENT TOTAL FOR WATERSHED</b>			<b>\$20,000.00</b>	

**CONNECTICUT RIVER – ASHUELOT RIVER – VERNON DAM  
TO MILLERS RIVER WATERSHED – May 2010**

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
	0.85		\$113,033.10	
<b>CURRENT TOTAL FOR WATERSHED</b>			<b>\$113,033.10</b>	

Two additional projects determined eligible for payment into the ARM Fund are noted below. These 2 projects have the potential of an additional \$79,663.74 to be paid into the Fund.

**POTENTIAL ARM FUND REVENUES, IMPACTS AND FUNCTION AND VALUES  
LOST IN CALENDAR YEAR 2009**

PROJECT TOWN	HUC & WATERSHED	IMPACTS	FUNCTIONS AND VALUES LOST	REVENUES
Rochester	Salmon Falls – Piscataqua Rivers	14,100	Limited wildlife habitat	49,663.74
Washington	CT-Ashuelot, Vernon Dam – Miller River	17,810	Wildlife habitat	30,000.00
<b>TOTALS FOR POTENTIAL PAYMENTS</b>		<b>0.73</b>		<b>\$79,663.74</b>

### III . DISBURSAL OF WATERSHED FUNDS IN 2009

#### Merrimack River Watershed

The DES ARM Fund was established by law in August, 2006 as a mitigation option for certain projects not able to provide other forms of mitigation. The ARM Fund Site Selection Committee (Committee) was set up to provide a mechanism for reviewing, evaluating, and selecting wetland restoration, upland preservation, wetland creation, and other aquatic resource improvement proposals. The Committee is composed of representatives from the following organizations: DES, Department of Economic Development NH Heritage Bureau, NH Fish and Game Department, Office of Energy and Planning, NH Association of Natural Resource Scientists, NH Association of Conservation Commissions, The Nature Conservancy and the Society for the Protection of NH Forests. According to the law, the projects determined to be appropriate for receipt of ARM Fund monies are subject to approval by the US Army Corps of Engineers (ACE) and the NH Wetlands Council (Council).

The Committee is charged with identifying proposals to be funded by selecting high priority projects that most effectively compensate for the loss of functions and values in the watershed. The Council is charged with approving disbursements of the ARM Fund based on recommendations provided by the Committee per RSA 482-A:29.

On April 2, 2009 DES announced the availability of \$650,000 of funds accrued in the Merrimack River watershed. The funds came from 9 permitted projects located in the towns of Bow, Candia, Epsom, Hooksett, Londonderry and Manchester (See Attachment A). These permitted projects impacted the following functions: wildlife habitat, groundwater discharge and recharge, flood storage and sediment/toxicant retention. The request for proposals ended on June 5, 2009 and eight applications were received in response to the solicitation.

In July, 2009 the Committee visited all the sites for which access was available. On July 22 the Committee convened to evaluate the applications and recommended full funding of projects 1 through 3 as noted below. The Committee determined that the three selected projects provide the greatest potential to replace or protect specific wetland functions and values lost by the impacts in the Merrimack River HUC 8 watershed. Where project scores were comparable, preference was given to projects that provide the longer-term, more beneficial protection.

The Committee also recommended partial funding for the Nesenkeag Brook Headwaters Project of up to \$20,000 to determine if a restoration plan could result in long-term improvements at the site. This approval is contingent upon the Town providing long-term protection of the property. The Nesenkeag Brook project has the potential to have good restoration of wetland functions and a component of protection for long-term success. All four projects selected are summarized as follows with a site map for each of the four projects found in Attachment B.

1. Project Proponent: Joint application by the Russell Foundation, Piscataquog Land Trust, and Saint Anselm College  
Project Title: Stewart Property, Francestown

This project proposes to purchase, fee simple, 55 acres of the Stewart land in Francestown. This purchase will protect: (1) over 5,000 feet of shoreline along Rand Brook and the South Branch of the Piscataquog River including enhancement involving restoration of active cow pasture back to natural riparian vegetation and the removal of invasive species in both wetlands (approximately 2 acres) and uplands, (2) a NH Natural Heritage ranked exemplary floodplain forest that includes both upland and floodplain vernal pools, habitats for several species listed in the NH Wildlife Action Plan including nesting goshawk, woodcock, and wood turtle, and water quality of Rand Brook and the Piscataquog

River. A conservation plan developed by the proponents ranked protecting the Stewart parcel and adjacent land as among the top three land conservation priorities for the Piscataquog River Watershed. This project is part of a larger conservation initiative called the Headwaters Project.

Grant amount requested:	\$45,500.00
Amount of non-federal matching funds secured:	\$125,000.00
Total project costs:	\$170,000.00

Committee Findings:

- A. The project includes restoration of multiple types of wetland resources with a high likelihood of success;
- B. There is a blend of functions to be restored which will be protected through a conservation easement;
- C. The site includes protection of a buffer adjacent to other protected lands;
- D. There is a biodiversity of aquatic habitats including vernal pools, riparian habitat and headwater areas; and
- E. There is a threat to aquatic resources from development as it is adjacent to residential development and includes high quality uplands with river frontage.

2. Project Proponent: Town of Hooksett and Bear-Paw Regional Greenways partnership  
Project Title: Clay Pond Headwaters Protection Project

The town and Bear-Paw Regional Greenways are working in partnership to conserve 733+/- acres of high value wildlife habitat in the Clay Pond Headwaters area, including over 130 acres of wetlands, and restore or provide habitat improvements for three streams that were negatively impacted crossings during historic settlement of the area. The goal is to permanently protect the area by combining town ownership with a conservation easement(s) held by Bear-Paw. This will assure permanent conservation of this area which is recognized as a top priority in Hooksett's Master Plan, the NH Wildlife Action Plan, Bear-Paw's Conservation Plan, and others. The three stream restoration sites will improve a total of 105 linear feet of perennial and intermittent habitat with a total of 6,389 square feet of restoration. The Hooksett Conservation Commission, ECHIP, the NHDES Wetlands Mitigation and Drinking Water Source Protection programs, and the Open Space Institute's Saving New England's Wildlife program have already committed funds to this important project.

Grant amount requested:	\$265,315.00
Amount of non-federal matching funds proposed:	\$1,064,475.00
Total project costs:	\$1,329,790.00

Committee Findings:

- A. Three restoration opportunities have a net functional benefit to habitat connectivity;
- B. Site includes large wetland complex, vernal pools of high habitat value, and is located in the headwaters of the HUC 10 watershed and a prime wetland, Clay Pond;
- C. Protection of the properties will add three parcels within the context of 733 acres of protected land adjacent to other large protected blocks; and
- D. The site is under potential threat primarily from forestry that does not follow best management practices which would adversely affect habitat and water quality functions. In addition, there is some potential for residential development.

3. Project Proponent: The Society for the Protection of NH Forest  
Project Title: Concord Regional Solid Waste/Resource Recovery Center, Canterbury

The Forest Society seeks to purchase and protect a 294-acre parcel in Canterbury. This property was previously proposed for the Concord Regional Solid Waste/Resource Recovery Center. Protecting

this land is of critical conservation importance as it includes 26 acres of wetlands and two miles of undeveloped shoreline on the Merrimack River, as well as exemplary plant communities and habitat for several state-listed plant and animal species. The entire property is within Tier One, Highest Ranked Habitat in NH, as identified in the NH Wildlife Action Plan. The property overlies an aquifer, with substrate identified as glacial lake bottom deposits. The property is well known for its long scenic wooded shoreline along the Merrimack River, and the hiking, fishing and boating enjoyment opportunities it provides. It is also proximate to several other preserved parcels along the river.

Grant amount requested:	\$300,000.00
Amount of non-federal matching funds proposed:	\$510,000.00
Total project costs:	\$810,000.00

**Committee Findings:**

- A. There is no restoration potential proposed as part of the application but the project meets the intentions and goals for protection of high value upland and riparian habitat;
- B. The site contains federal & state listed plant species and exemplary natural communities with high value wildlife habitat with significant floodplain forest component;
- C. The proposed conservation easement will allow for restoration and enhancement activities on the wetlands and shoreline and will include specific provisions specifically allowing wetland restoration or enhancement activities on the property; and
- D. There is evidence of this property being under threat as it was previously considered for a regional landfill with a high likelihood it could have been developed. An application for the landfill had been submitted to DES for review.

**4. Project Proponent: Town of Londonderry**  
**Project Title: Nesenkeag Brook Headwaters Project, Londonderry**

The restoration of the Nesenkeag Brook Headwaters site attempts to return a degraded ecosystem to its natural potential. The project proposes to restore and protect these values. The percentage of restored wetland functions will be assessed through annual monitoring for at least three years. After implementing restoration, specific measurable results will likely include: wildlife habitat improvement; reduction of invasive species; and possible water quality improvements. Other positive measurable results are likely after full on-site wetland analysis, hydrology, and final restoration plans are completed and implemented.

Grant amount requested:	\$88,198.00
Amount of non-federal matching funds proposed:	\$5,969.80
Total project costs:	\$94,167.80

**Committee Findings:**

- A. The opportunity for restoration and invasive species elimination includes a comprehensive review of the Nesenkeag Headwaters site which will include a detailed survey, wetland delineation, and engineered plan and specifications to address impaired functions and values and water quality issues;
- B. The final restoration plans are likely to address the following (but not limited to): restoring hydrologic conditions; grading to reestablish historic topography; control and removal of invasive plants; riparian planting with trees and other native wetland species;
- C. Although under Town ownership, no additional long-term protection measures, such as a conservation easement, are proposed; and
- D. There is a level of uncertainty of what will result from the hydrologic plan if the plan in fact, increases functions at that site.

The Committee's findings for the four applications that will not receive ARM funds are summarized in Attachment C.

#### **IV. DES MITIGATION PROGRAM ACHIEVEMENTS IN 2009**

In the third year of operation, the ARM Fund program has made huge progress in the use of collected funds. The following items summarize additional program achievements to date:

- The DES Wetlands Bureau, Mitigation Program was awarded US Environmental Protection Agency grant funds to develop a strategy for identifying wetland restoration projects at the HUC 8 watershed scale. The grant developed a model that was initially used for the Merrimack River watershed. The results of that effort can be reviewed on an interactive web site as follows: [www.restoreNHwetlands.com](http://www.restoreNHwetlands.com). The second phase of the grant is to continue implementation of the model on the Winnepesaukee River, Upper Connecticut, and Connecticut River from the Johns River to Waits River watersheds. This second phase will be completed in December, 2009. The Department may continue the use of the model in other watersheds for identification of restoration opportunities.
- Senate Bill 65 was entered into legislation to expand the eligibility for projects with stream related impacts to provide payments in-lieu of other forms of mitigation. The Department of Environmental Services (DES) supported the bill which implements a recommendation of the Final Report of the Comprehensive Flood Management Study Commission (New Hampshire House Bill 648, Chapter 179.1, Laws of 2007). The report specifically recommended the development of a DES in-lieu mitigation option for projects that impact floodplains and stream channels. The funds generated will be eligible to municipal and state agencies, non-profit organizations and watershed associations for stream restoration and protection projects. See Attachment D for the final bill text.

#### **V. CONCLUSION**

The above projects demonstrate that the ARM Fund has made significant progress toward accomplishing its goal of providing watershed-based mitigation for permitted impacts. The Department recognizes the Fund is in an advantageous position to bring significant mitigation projects to completion. The new Aquatic Resource Mitigation program offers a chance for municipalities to accomplish high priority local conservation goals, a mechanism for developers to proceed with projects once not viable because no compensatory wetland mitigation was practicable; and an opportunity for the State to accomplish projects with greater conservation value than can be achieved through conventional compensatory wetland mitigation. For additional information, please contact Ms. Lori L. Sommer at 603-217-4059 or [Lori.Sommer@des.nh.gov](mailto:Lori.Sommer@des.nh.gov).

**ATTACHMENT A.**

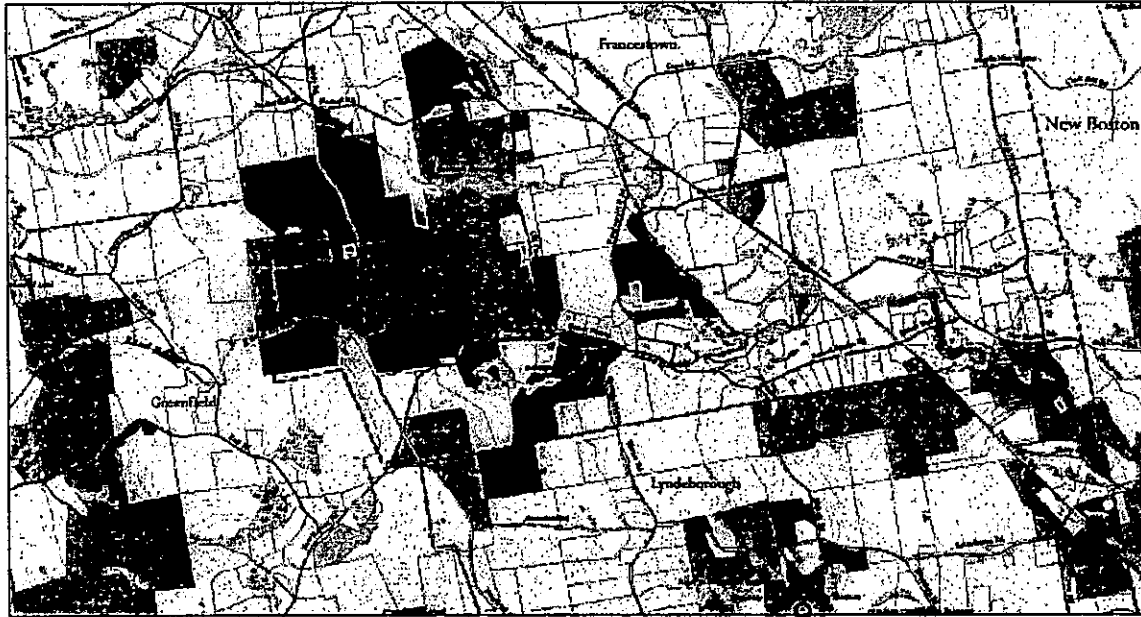
**MERRIMACK RIVER WATERSHED ARM FUND PAYMENTS**

PERMIT #	LOCATION	PROJECT TYPE	COWARDIN CLASS	PRIMARY F/V's	OTHER ISSUES	WETLAND LOSS SQFT	PAYMENT AMOUNT	DEPOSIT DATE
2006-2360	Londonderry	Coca Cola 32,850 sq.ft. facility addition, access road	PEM manmade area used for drainage/retention	Storm water detention of runoff from existing site		17,520	52,394.00	1/25/2007
2006-712	Hooksett	SNU dining facility	PFO1	Floodflow alt, limited groundwater recharge/dischARGE, wildlife habitat		15,678	61,153.33	6/18/2007
2005-2505	Hooksett	Lowe's-Walmart stores	PEM1Ex, PFO1Ex, man-made seasonal stream	Groundwater recharge/dischARGE	Former gravel pit. Potential NE cottontail habitat	25,381	77,636.00	9/6/2007
2006-1471	Candia	Light industrial park on 14 acre parcel	PFO1	Storm water det, sed/ tox retention		31,319	82,438.00	12/27/2007
2008-3	Londonderry	DOT roadway widening, intersection reconfiguring	PEM1F, R2UB2, PFO1 E	Wildlife habitat, sed/tox retention, some floodflow alt		22,332	35,545.44	3/27/2008
2006-3183	Epsom	Roadway const. for commercial subdivision	PFO1E, PFO1C, PFO1/C and E	Groundwater recharge; floodflow alt; sed/tox removal;		19,922	52,342.79	8/16/2008
2007-2200	Epsom	Commercial development of 12 ac for retail	PFO1E	Flood storage, wildlife habitat		17,422	45,774.52	12/2/2008
2008-2312	Bow	PSNH power plant improvement	PSS1E	Flood storage, groundwater discharge, wildlife habitat	Worked with F&G on New England cottontail mitigation	26,905	78,157.28	1/26/2009
2006-3219	Manchester	Airport EMAS project	PFO1E, PSS	Sed tox/removal, wildlife habitat, nutrient retention	Wetland restoration was not successful		200,000	2/20/2009
<b>TOTALS</b>						<b>176,479</b>	<b>685,441.36</b>	

ATTACHMENT B.

PARCEL INFORMATION FOR FOUR ARM FUND PROJECTS

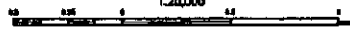
Stewart Property, Francestown



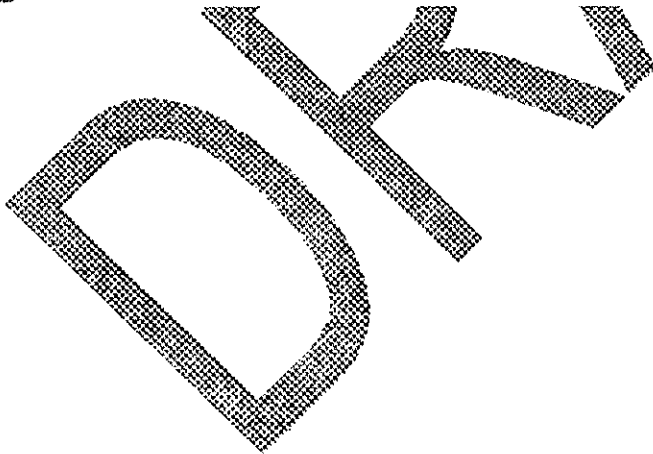
Stewart Property Local Context

- Stewart Property
- Completed ID-1 Projects
- ⊖ Town Boundaries
- ~ Streams and Rivers
- Other Chartered Lands
- ~ 20' Contours
- ⊖ Lakes and Ponds
- Tax Parcels
- ~ Public Roads
- ⊖ Wetlands

A



NEW HAMPSHIRE  
COUNTY  
DATE ISSUED: 10/20/09  
PROJECT: 10/20/09  
SCALE: 1:20,000



# Clay Pond Headwaters Project, Hooksett - 2005 Aerial View



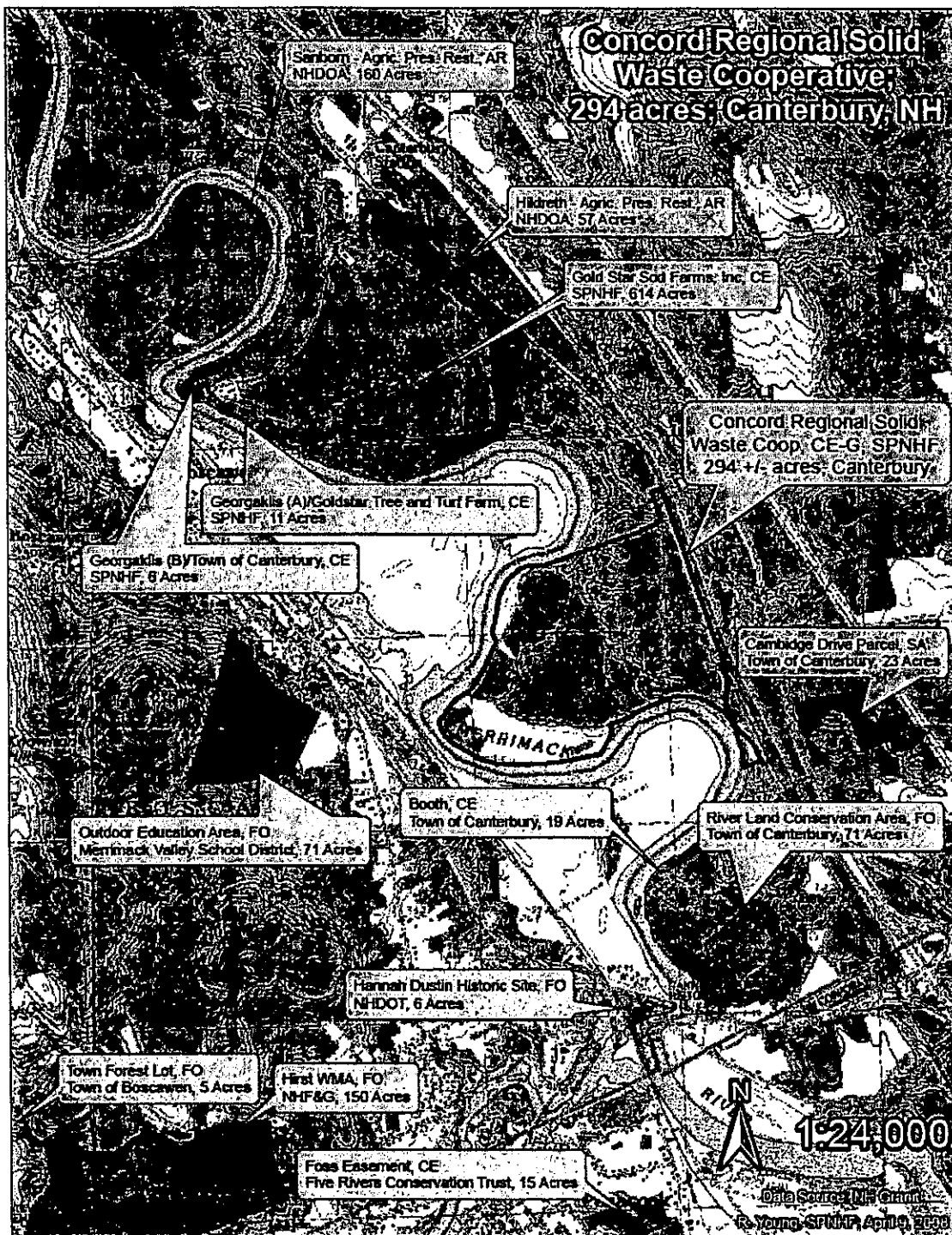
County Lines	Clay Pond Headwaters Project - Bankowned	Town of Hooksett
Town Lines	Gagne	Conservation Lands
Streams	Wiggin Associates	
Intermittent Streams	Murphy-Strachan	

1:24,000  
0 1,000 2,000 Feet

Map created by Bear-Paw Regional Greenways - 2000



# CRSWRRC, Canterbury





## ATTACHMENT C.

### SUMMARY OF FOUR ARM FUND PROJECTS NOT SELECTED FOR FUNDING

**1. Project Proponent:** Southeast Land Trust of New Hampshire  
**Project Title:** Grassy Brook Farm/Paul-Mannino Property, South Hampton

Grassy Brook Farm is 46.97 acres of wetlands, fields, and forest. This property drains into the Grassy Brook wetland complex that flows into the Powwow River and eventually the Merrimack River. The proponent proposes to protect and conserve the property through the conveyance of a conservation easement with an option to purchase contingent on ARM funding.

Grant amount requested:	\$150,515.98.00
Amount of non-federal matching funds proposed:	\$2,023.00
Total project costs:	\$152,538.98

**Committee Findings:**

- A. The application does not propose restoration although some culvert enhancements could be considered in addition to the budget for protecting the parcel, however, that would involve getting permission from several other landowners;
- B. The majority of the wetlands, approximately 10 acres, are located in the central portion of the property and are a part of the Grassy Brook drainage that flows into the Powwow River and eventually the Merrimack River.
- C. The conservation easement on this parcel may lead to additional adjacent parcels to be protected; and
- D. The threat of development is questionable as access is limited and would require permission to cross other parcels.

**2. Project Proponent:** Town of Litchfield and agent Swamp, Inc.  
**Project Title:** Greenwich Road, Litchfield

This is a four year project to restore an emergent wetland that is owned by the town and located on Greenwich Road. The site is threatened by invasive species, specifically Phragmites and purple loosestrife. Open water habitat also is proposed to be created. A portion of marsh is currently under a conservation easement. Funds are proposed to be used for final restoration plan and to cover costs associated with the restoration work, construction management, permit costs, excavation costs and disposal of excavated materials, as well as post-construction monitoring and maintenance.

Grant amount requested:	\$164,035.00
Amount of non-federal matching funds proposed:	\$0
Total project costs:	\$164,035.00

**Committee Findings:**

- A. The proposal for invasive species management has a low potential for long-term sustainability as it addresses symptoms rather than the problem(s);
- B. The area was originally a spruce-fir forest that will not be restored in this application; and
- C. Impacts to the upland buffer for creation of open water is not justified.

**3. Project Proponent:** Town of Windham and agent Swamp, Inc.  
**Project Title:** Lowell Road, Windham

This four year project aims to restore an emergent wetland threatened by invasive plants and to create open water habitat. The property is located on Lowell Road and is privately owned. This project

requests ARM funds to develop final restoration plans and to cover costs associated with the proposed restoration work, construction of a walkway, permit costs and administrative costs. ARM funds are also requested for pre- and post-restoration monitoring and maintenance expenses until the site is successfully restored.

Grant amount requested:	\$61,685.00
Amount of matching non-federal funds proposed:	\$0
Total project costs:	\$61,685.00

**Committee Findings:**

- A. The proposal for invasive species management has a low potential for long-term success;
- B. The area is in highly developed location and susceptible to continual exposure to invasive species; and
- C. The proposal provides questionable restoration methods and does not achieve long-term protection of the property.

**4. Project Proponent:** Town of Windham and agent Swamp, Inc.  
**Project Title:** Marblehead Road, Windham

This four year project aims to restore a portion of a sixty-two acre red maple swamp threatened by invasive plants. The wetland to be restored is located on Marblehead Road and abuts a former incinerator site. The ash has been capped and does not produce methane. The Town of Windham owns the entire landfill and adjacent marsh. Three town organizations are involved with this project: the Conservation Commission, the town Health Officer, and the Board of Selectmen.

Grant amount requested:	\$41,660.
Amount of non-federal matching funds proposed:	\$0
Total project costs:	\$41,660.00

**Committee Findings:**

- A. The proposal for invasive species management has a low potential for long-term success;
- B. The site is adjacent to a capped landfill that may be used in a way that may cause degradation of habitat values;
- C. The proposal provides questionable restoration methods and does not achieve long-term protection of the property; and
- D. The invasive species "problem" does not seem to have reduced the functioning of the wetland.

ATTACHMENT D  
SENATE BILL 65-FN – FINAL VERSION  
2009 SESSION

09-0743

06/03

SENATE BILL **65-FN**

BT relative to the acceptance of in lieu payments for the restoration or creation of wetlands and establishing a committee to study the administrative fee percentage for such in lieu payments.

SORS: Sen. Janeway, Dist 7; Rep. Kappler, Rock 2; Rep. Gottling, Sull 3

COMMITTEE: Energy, Environment and Economic Development

AMENDED ANALYSIS

This bill:

- I. Permits the department of environmental services to accept in lieu payments for the restoration or creation of wetlands and the preservation of upland areas adjacent to wetlands, streams, rivers, and their riparian habitats.
- II. Establishes a committee to study the administrative fee percentage for such in lieu payments.

-----  
Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears ~~(in brackets and struckthrough.)~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/11/09 0642s

06May2009... 1337h

03Jun2009... 1920h

06/24/09 2219CofC

06/24/09 2357eba

09-0743

06/03

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nine*

BT relative to the acceptance of in lieu payments for the restoration or creation of wetlands and establishing a committee to study the administrative fee percentage for such in lieu payments.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

303:1 Aquatic Resource Compensatory Mitigation. Amend RSA 482-A:28 to read as follows:

482-A:28 Aquatic Resource Compensatory Mitigation. In lieu of other forms of compensatory mitigation, the department may accept payment for an unavoidable loss of aquatic resource functions and values from ~~[a proposed activity which at a minimum:~~

~~I. Impacts less than one acre of wetlands and meets the criteria for a United States Army Corps of Engineers state programmatic general permit.~~

~~II. Exceeds one acre of impact for a public roadway or a public utility project and meets the criteria for a United States Army Corps of Engineers state programmatic general permit]~~ **impacts to resources protected under this chapter.**

303:2 Fund Established. Amend RSA 482-A:29, I to read as follows:

I. There is hereby established the aquatic resource compensatory mitigation fund into which payments made under this subdivision shall be deposited. The fund shall be a separate, nonlapsing fund continually appropriated to the department to be used only as specified in this subdivision for costs related to wetlands creation or restoration, stream **and river** restoration, **stream and river enhancement**, preservation of upland areas adjacent to wetlands **and riparian areas**, and the subsequent monitoring and maintenance of such areas.

303:3 New Section; Payment for Stream or Shoreline Losses. Amend RSA 482-A by inserting after section 30 the following new section:

482-A:30-a Payment for Stream or Shoreline Losses. For stream or shoreline resource losses, the in lieu payment shall be the sum of:

I. The cost that would have been incurred if a stream of the same type was restored at the ratios adopted by the department, based on a price of \$200 per linear foot of channel or bank impacts or both, to be adjusted at the beginning of the calendar year according to the annual simple rate of interest on judgments established by RSA 336:1; and

II. An administrative assessment equal to 5 percent of the amount in paragraph I.

303:4 Rulemaking. Amend RSA 482-A:31, II to read as follows:

II. The method of calculating the amount of in lieu payments under RSA 482-A:30 **and RSA 482-A:30-a** which shall approximate the total cost of wetlands construction, **stream and river construction**, or such other mitigation actions as would have been required by the department and incurred by the applicant in the absence of making such payments. An administrative assessment of 5 percent of the total cost shall be added as part of the calculation method.

303:5 Aquatic Resource Compensatory Mitigation Fund. Amend RSA 482-A:29, II to read as follows:

II. The fund may ~~[not]~~ be used to ~~[pay state personnel costs except, upon approval of the fiscal committee,]~~ **supplement the administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a, II** to support up to ~~[one]~~ **2** full-time ~~[position]~~ **positions** for administration of the fund and related projects. ~~[Only money from the 5 percent administrative assessment collected under RSA 482-A:30, III shall be used for this purpose.]~~

303:6 Aquatic Resource Compensatory Mitigation Fund. RSA 482-A:29, II is repealed and reenacted to read as follows:

II. The fund may not be used to pay state personnel costs except, upon approval of the fiscal committee, to support up to one full-time position for administration of the fund and related projects.

Only money from the 5 percent administrative assessment collected under RSA 482-A:30, III and RSA 482-A:30-a, II shall be used for this purpose.

303:7 Committee Established. There is established a committee to study the administrative fee percentage under RSA 482-A:30, III, RSA 482-A:30-a, II, and RSA 482-A:31, II and to recommend a new administrative fee percentage adjusted to cover the cost of the program.

303:8 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, 2 from the ways and means committee and one from the resources, recreation and development committee, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

303:9 Duties. The committee shall study the administrative fee percentage under RSA 482-A:30, III, RSA 482-A:30-a, II, and RSA 482-A:31, II and recommend a new administrative fee percentage adjusted to cover the cost of the program.

303:10 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

303:11 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, the chairman of the house ways and means committee, the chairman of the senate ways and means committee, and the state library on or before November 1, 2009.

303:12 Effective Date.

I. Section 6 of this act shall take effect July 1, 2010.

II. Section 5 and sections 7-12 of this act shall take effect upon its passage.

III. The remainder of this act shall take effect 60 days after its passage.

Approved: July 31, 2009

Effective Date: I. Section 6 shall take effect July 1, 2010.

II. Sections 5 and 7-12 shall take effect July 31, 2009.

III. Remainder shall take effect September 29, 2009.

LBAO

09-0743

Amended 06/10/09

**FISCAL IMPACT – ONE FULL TIME AND ONE PART TIME  
POSITIONS CALCULATION WORKSHEET**

**FULL TIME**

<b>Labor Grade 27, start @ step 3</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
Salary	53,137.50	55,497.00	57,934.50	60,567.00
<b>Full Time Benefits</b>	<b>3,294.53</b>	<b>3,440.81</b>	<b>3,591.94</b>	<b>3,755.15</b>
Social Security (6.2% of salary)	770.49	804.71	840.05	878.22
Medicare (1.45% of salary)	4,314.77	4,683.95	7,021.66	7,340.72
Retirement (12.12% of salary)	4,484.81	4,683.95	4,889.67	5,111.85
Additional Fringe Benefit	19.50	19.50	19.50	19.50
Life Insurance	3,294.53	3,440.81	3,591.94	3,755.15
Dental Insurance	1,506.96	1,522.03	1,537.25	1,552.63
Health Insurance	23,015.76	23,245.92	23,478.38	23,713.16
<b>Total Salary &amp; Benefits</b>	<b>90,544.31</b>	<b>93,897.86</b>	<b>99,312.95</b>	<b>102,938.24</b>

**Other Costs**

Current Expense Equipment (one-time)	1,928.00	1,928.00	1,980.00	1,980.00
Office Space	3,688.00	3,513.00	3,583.26	3,654.93
OIT costs	2,812.00	3,894.00	3,971.88	4,051.32
Travel	1,050.00	1,150.00	1,150.00	1,173.00
<b>TOTAL POSITION COSTS</b>	<b>100,022.31</b>	<b>104,382.86</b>	<b>109,998.09</b>	<b>113,797.48</b>

**PART TIME**

<b>Labor grade 21, start @ Step 3</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
<b>SALARY</b>	<b>\$41,086.50</b>	<b>\$42,744.00</b>	<b>\$44,538.00</b>	<b>\$46,410.00</b>	<b>\$48,769.50</b>
<b>HOURLY</b>	<b>\$21.07</b>	<b>\$21.92</b>	<b>\$22.84</b>	<b>\$23.80</b>	<b>\$25.01</b>
<b>30 HOUR WORK WEEK</b>	<b>\$30,340.80</b>	<b>\$31,564.80</b>	<b>\$32,889.60</b>	<b>\$34,272.00</b>	<b>\$36,014.40</b>



**FISCAL IMPACT – TWO FULL TIME POSITIONS  
CALCULATION WORKSHEET**

<b>FULL TIME Labor Grade 27, start @ step 3</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>Salary</b>	53,137.50	55,497.00	57,934.50	60,567.00
<b>Full Time Benefits</b>	3,294.53	3,440.81	3,591.94	3,755.15
Social Security (6.2% of salary)	770.49	804.71	840.05	878.22
Medicare (1.45% of salary)	4,314.77	4,683.95	7,021.66	7,340.72
Retirement (12.12% of salary)	4,484.81	4,683.95	4,889.67	5,111.85
Additional Fringe Benefit	19.50	19.50	19.50	19.50
Life Insurance	3,294.53	3,440.81	3,591.94	3,755.15
Dental Insurance	1,506.96	1,522.03	1,537.25	1,552.63
Health Insurance	23,015.76	23,245.92	23,478.38	23,713.16
<b>Total Salary &amp; Benefits</b>	<b>90,544.31</b>	<b>93,897.86</b>	<b>99,312.95</b>	<b>102,938.24</b>
<b>Other Costs</b>				
Current Expense Equipment (one-time)	1,928.00	1,928.00	1,980.00	1,980.00
Office Space	3,688.00	3,513.00	3,583.26	3,654.93
OIT costs	2,812.00	3,894.00	3,971.88	4,051.32
Travel	1,050.00	1,150.00	1,150.00	1,173.00
<b>TOTAL POSITION COSTS</b>	<b>100,022.31</b>	<b>104,382.86</b>	<b>109,998.09</b>	<b>113,797.48</b>

**FULL TIME****Labor grade 21, start @ Step 3**

	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>Salary</b>	<b>\$41,086.50</b>	<b>\$42,744.00</b>	<b>\$44,538.00</b>
<b>Full Time Benefits</b>	<b>3,440.81</b>	<b>3,591.94</b>	<b>3,755.15</b>
Social Security (6.2% of salary)	804.71	840.05	878.22
Medicare (1.45% of salary)	4,683.95	7,021.66	7,340.72
Retirement (12.12% of salary)	4,683.95	4,889.67	5,111.85
Additional Fringe Benefit	19.50	19.50	19.50
Life Insurance	3,440.81	3,591.94	3,755.15
Dental Insurance	1,522.03	1,537.25	1,552.63
Health Insurance	23,245.92	23,478.38	23,713.16
<b>Total Salary &amp; Benefits</b>	<b>\$82,928.18</b>	<b>\$87,714.39</b>	<b>\$90,664.38</b>
<b>Other</b>			
Current Expense	1,928.00	1,980.00	1,980.00
Equipment (one)			
Office Space	3,513.00	3,583.26	3,654.93
OIT costs	3,894.00	3,971.88	4,051.32
Travel	1,150.00	1,150.00	1,173.00
<b>TOTAL POSITION COSTS</b>	<b>\$93,413.18</b>	<b>\$98,399.53</b>	<b>\$101,523.63</b>

PAYMENTS INTO THE ARM FUND

PERMIT #	LOCATION	WETLAND LOSS (square feet)	TOTAL PAYMENT AMOUNT	5% ADMIN FEE	DEPOSIT DATE	ACCOUNT LETTER
2006-2360	Londonderry	17,520	52,394.00	2,512.62	1/25/2007	F
2006-712	Hooksett	15,678	61,153.33	2,877.09	6/18/2007	F
2002-1856	Bethlehem	14,800	14,904.44	690.00	7/20/2007	O
2002-2529	Littleton	11,898	29,904.23	1,424.00	8/2/2007	O
2006-516	Pittsburg	43,452	103,226.00	4,915.51	8/20/2007	P
2005-3055	Tilton	25,850	85,108.00	4,053.43	8/30/2007	D
2005-2505	Hooksett	25,381	77,636.00	3,713.96	9/6/2007	F
2006-2266	Moultonboro	21,485	76,358.73	3,636.14	12/5/2007	D
2006-1471	Candia	31,319	82,438.00	3,920.13	12/27/2007	F
2007-881	Lincoln	12,437	30,122.14	1,434.39	2/27/2008	N
2007-145	Woodstock	15,500	37,280.06	1,775.23	3/1/2008	N
2008-3	Londonderry	22,332	35,545.44	1,692.41	3/27/2008	F
2007-2703	Keene	36,990	113,033.10	5,382.53	4/30/2008	I
2007-1538	Lincoln	6,123	14,829.77	706.18	6/23/2008	N
2008-590	Rye	2,000	14,216.22	676.96	7/28/2008	E
2006-3183	Epsom	19,922	52,342.79	2,492.51	8/16/2008	F
2007-2373	Stratham	35,000	124,391.90	5,923.42	9/2/2008	E
2008-2098	Milan	26,435	63,110.55	3,005.26	10/17/2008	A
2007-2200	Epsom	17,422.00	45,774.52	2,179.73	12/2/2008	F
2008-2312	Bow	26,905	78,157.28	3,721.78	1/26/2009	F
2005-2313	Colebrook	22,075	52,933.59	2,520.65	2/18/2009	P
2006-2733	Lee	23,890	68,374.50	3,242.36	2/5/2009	E
2006-3219	Manchester		200,000.00	10,000.00	2/19/2009	F
2008-1529	Jefferson	210	503.51	23.98	3/24/2009	O
2008-2762	Littleton	12,933	32,505.59	1,450.00	3/27/2009	O
2008-1332	Dalton	12645	30,357.77	1,445.67	4/13/2009	O
2008-807	Lincoln	26760	64,812.14	3,086.29	4/20/2009	N
2008-1333	Whitefield	80,770	90,000.00	4,500.00	5/12/2009	O
2008-1264	Seabrook	16,094	57,198.96	\$2,723.53	6/8/2009	E
2009-593	Durham	16,094	14,653.53	\$697.79	8/19/2009	E
2009-937	Hampton	24,001	95,766.77	4,560.32	10/7/2009	E
2008-2780	Portsmouth	1,000	7,980.00	380.01	8/19/2009	E
<b>TOTALS</b>		664,921	1,907,012.86	91,363.88		

REVISED OCTOBER 12, 2009

Amendment to HB 681-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to assessments for aquatic resource compensatory mitigation.

4

5 Amend the bill by replacing all after the enacting clause with the following:

6

7 1 Aquatic Resource Compensatory Mitigation; Fund Established. RSA 482-A:29, II is repealed  
8 and reenacted to read as follows:

9 II. A separate, non-lapsing account shall be established within the fund into which all  
10 administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a, II shall be  
11 placed. Such account moneys shall only be used to support up to 2 full-time positions for  
12 administration of the fund and related projects. No other fund moneys shall be used for state  
13 personnel costs.

14 2 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as  
15 follows:

16 III. An administrative assessment which equals [5] 20 percent of the sum of paragraphs I  
17 and II.

18 3 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as  
19 follows:

20 III. An administrative assessment which equals [20] 5 percent of the sum of paragraphs I  
21 and II.

22 4 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:

23 II. An administrative assessment equal to [5] 20 percent of the amount in paragraph I.

24 5 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:

25 II. An administrative assessment equal to [20] 5 percent of the amount in paragraph I.

26 6 Rulemaking. Amend RSA 482-A:31, II to read as follows:

27 II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and  
28 RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river  
29 construction, or such other mitigation actions as would have been required by the department and  
30 incurred by the applicant in the absence of making such payments. An administrative assessment of  
31 [5] 20 percent of the total cost shall be added as part of the calculation method.

32 7 Rulemaking. Amend RSA 482-A:31, II to read as follows:

1           II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and  
2 RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river  
3 construction, or such other mitigation actions as would have been required by the department and  
4 incurred by the applicant in the absence of making such payments. An administrative assessment of  
5 ~~[20]~~ 5 percent of the total cost shall be added as part of the calculation method.

6           8 Report. Amend RSA 482-A:33 to read as follows:

7           482-A:33 Report. The department shall submit an annual report by October 1 beginning with  
8 fiscal year 2006, to the fiscal committee, the chairperson of the house resources, recreation and  
9 development committee, and the chairperson of the senate environment and wildlife committee  
10 summarizing all receipts and disbursements of the aquatic resource compensatory mitigation fund,  
11 including a description of all projects undertaken *and the status of the administrative*  
12 *assessment account*. Each report shall be in such detail with sufficient information to be fully  
13 understood by the general court and the public. After submission to the general court, the report  
14 shall be available to the public.

15           9 Department Investigation. The department of environmental services shall investigate ways  
16 of compiling and providing information on known compensatory mitigation opportunities to  
17 applicants who need to compensate for unavoidable impacts by their proposed projects, as part of the  
18 wetlands permitting process, and propose to make in lieu payments under RSA 482-A:28-33. The  
19 department shall report on the results of this investigation on October 1, 2011 as part of its annual  
20 report under RSA 482-A:33.

21           10 Effective Date.

22           I. Sections 3, 5, and 7 of this act shall take effect July 1, 2012.

23           II. Section 1 shall take effect July 1, 2010 at 12:01 a.m.

24           III. The remainder of this act shall take effect July 1, 2010.

2009-2477h

**AMENDED ANALYSIS**

This bill temporarily increases the percentage of certain administrative assessments related to aquatic resource compensatory mitigation.



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

Attachment #2



**Thomas S. Burack, Commissioner**

April 1, 2010

The Honorable Martha Fuller Clark, Chairman  
Senate Energy, Environment and Economic Development  
Legislative Office Building, Room 102  
Concord, New Hampshire 03301

**Re: HB 681-FN as amended relative to assessments for aquatic resource compensatory mitigation**

Dear Chairman Fuller Clark:

Thank you for the opportunity to comment on HB 681 as amended relative to assessments for the aquatic resource compensatory mitigation (ARM) fund. The Department of Environmental Services (DES) supports this bill.

HB 681 proposes to modify the ARM fund program by amending RSA 482-A:29, 30, 30-a, 31 and 33. The bill proposes that the administrative fee be increased from 5% to 20% for the period from July 1, 2010 through June 30, 2012 then revert back to the current fee level of 5% on July 1, 2012. DES would also be required to report annually to the General Court on all receipts and disbursements from the ARM fund and the projects implemented and to provide a report to the General Court by October 1, 2011 on ways to compile and provide information to wetlands permit applicants on known compensatory mitigation opportunities.

When compensatory mitigation is required as a permit condition for projects with substantial wetlands impacts, there are four possible ways for permittees to achieve compliance: preservation of lands with significant natural resource value, wetlands restoration, wetlands creation or payment into the state ARM fund. Any one or a combination of these options might be used in a mitigation package to comply with DES rules and the requirements of the U.S. Army Corps of Engineers. Note that participation in the ARM fund program is an option for applicants rather than a mandate since these other compensatory mitigation alternatives are also available. Contribution to the ARM fund as a means to achieve required compensatory mitigation was originally authorized in New Hampshire in 2006 by enactment of RSA 482-A:28 through 30. In 2009, RSA 482-A:30-a was enacted to expand ARM fund coverage to include compensatory mitigation for stream or shoreline losses. ARM fund payments collected by DES are pooled with funds collected from other permitted projects within the same watershed to be used to fund environmental projects with substantial conservation value. Projects are selected for funding based on a competitive process for each watershed. To date, DES has either selected projects or requested proposals for projects in the Merrimack, Winnepesaukee, Ashuelot, Pemigewasset and Connecticut River watersheds.

When the ARM fund was enacted in 2006, a 5% administrative fee was authorized to be collected and used by DES for program administration. At that time, the expected level of participation in this optional program by applicants was uncertain. To

DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

April 1, 2010

date, participation has been relatively high and future participation is expected to increase for two reasons. First, as noted above, the ARM fund participation option was expanded in 2009 by enactment of RSA 482-A:30-a to include compensatory mitigation for stream or shoreline losses. Second, the Corps of Engineers has expressed greater support for compensatory mitigation by ARM fund contributions than at any time in the past, thus further promoting program expansion.

RSA 482-A authorizes two full time positions to implement the ARM fund Program, one of which is currently filled. Staff responsibilities include a wide range of activities such as providing applicants with technical support during the wetlands permitting process, coordination with Wetlands Bureau permitting staff as permits are written, issuance of ARM fund approval letters, the distribution of ARM funds to selected mitigation projects and assessment of project success after projects have been implemented. In State Fiscal Year 2010, the existing 5% administrative fee provided about \$33,000 in revenues, thus only covering the costs for about half of the existing filled position. Revenues provided by the proposed 20% administrative fee would cover the annual costs for two staff at last year's activity levels. If HB 681 is enacted, the increased fee coupled with the required annual reports will enable more complete program implementation and provide adequate information for DES and the General Court to determine the appropriate funding level for this program for the future.

Thank you for this opportunity to comment on this bill. Please feel free to call Rene Pelletier at 271-2951 or me at 271-2958, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack  
Commissioner

cc: Senator Reynolds  
Representatives E. Merrick, Russell, S. Merrick, and Sad



# Speakers



# Voting Sheets

# Senate Energy, Environment & Economic Development Committee EXECUTIVE SESSION

Bill # HB 681-FN

Hearing date: 4/1/10

Executive session date: 4/1/10

Motion of: OTP

VOTE: 6-0

<b>Made by</b>	Fuller Clark <input checked="" type="checkbox"/>	<b>Seconded</b>	Fuller Clark <input type="checkbox"/>	<b>Reported</b>	Fuller Clark <input checked="" type="checkbox"/>
<b>Senator:</b>	Merrill <input type="checkbox"/>	<b>by Senator:</b>	Merrill <input type="checkbox"/>	<b>by Senator:</b>	Merrill <input type="checkbox"/>
	Lasky <input type="checkbox"/>		Lasky <input type="checkbox"/>		Lasky <input type="checkbox"/>
	Cilley <input type="checkbox"/>		Cilley <input checked="" type="checkbox"/>		Cilley <input checked="" type="checkbox"/>
	Odell <input type="checkbox"/>		Odell <input type="checkbox"/>		Odell <input type="checkbox"/>
	Bradley <input type="checkbox"/>		Bradley <input type="checkbox"/>		Bradley <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Fuller Clark, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Merrill, Vice-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lasky	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Cilley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Odell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Amendments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Notes: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: April 1, 2010

THE COMMITTEE ON Energy, Environment and Economic Development  
to which was referred House Bill 681-FN

AN ACT (New Title) relative to assessments for aquatic resource  
compensatory mitigation.

Having considered the same, the committee recommends that the Bill:

**OUGHT TO PASS**

BY A VOTE OF: 6 - 0

AMENDMENT # s

Senator Jacalyn L. Cilley  
For the Committee

Marty Cote 271-3045

## New Hampshire General Court - Bill Status System

**Docket of HB681**

Docket Abbreviations

**Bill Title:** (New Title) relative to assessments for aquatic resource compensatory mitigation.*Official Docket of HB681:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
01/08/2009	H	Introduced and Referred to Resources, Recreation and Development; <b>HJ 12</b> , PG.237
02/11/2009	H	Public Hearing: 2/19/2009 1:30 PM LOB 305
03/05/2009	H	Executive Session: 3/12/2009 10:30 AM LOB 305
03/18/2009	H	Retained in Committee
09/14/2009	H	Retained Bill - Full Committee Work Session: 9/22/2009 1:00 PM LOB 305
09/14/2009	H	Retained Bill - Full Committee Work Session: 9/30/2009 10:00 AM LOB 305
11/02/2009	H	==CANCELLED== Public Hearing: 11/10/2009 9:30 AM LOB 305
11/02/2009	H	==CANCELLED== Public Hearing on Proposed Amendment: 11/17/2009 9:30 AM LOB 305
11/09/2009	H	Public Hearing on Proposed Amendment: 11/19/2009 11:30 AM LOB 305-307
11/09/2009	H	Retained Bill - Executive Session: 11/24/2009 9:30 AM LOB 305
11/25/2009	H	Majority Committee Rept: Ought to Pass with AM #2010-0005h (NT) for Jan 6 RC (vote 14-6); <b>HC2</b> , PG.99
11/25/2009	H	Proposed Majority Amendment #2010-0005h (New Title); <b>HC 1</b> , PG.62-63
11/25/2009	H	Minority Committee Report: Inexpedient to Legislate; <b>HC 2</b> , PG.99
01/06/2010	H	Special Ordered to Next Session Date in Regular Calendar Order; <b>HJ 6</b> , PG.310
01/13/2010	H	Amendment #2010-0005h (New Title) Adopted, <b>RC 173-146</b> ; <b>HJ 9</b> , PG.432-434
01/13/2010	H	Ought to Pass with Amendment #2010-0005h (New Title): MA DIV 171-149; <b>HJ 9</b> , PG.432-435
01/13/2010	H	Referred to Ways and Means; <b>HJ 9</b> , PG.435
01/26/2010	H	Public Hearing: 2/2/2010 1:30 PM LOB 202
02/02/2010	H	Executive Session: 2/11/2010 9:30 AM LOB 202
02/12/2010	H	Committee Report: Ought to Pass for Mar 3 CC (Vote 15-2); <b>HC 17</b> , PG.816
03/03/2010	H	Ought to Pass: MA VV; <b>HJ 20</b> , PG.1164
03/17/2010	S	Introduced and Referred to Energy, Environment and Economic Development, <b>SJ 10</b> , Pg.171
03/26/2010	S	Hearing: April 1, 2010, Room 102, LOB, 9:10 a.m.; <b>SC13</b>
04/01/2010	S	Committee Report: Ought to Pass 4/7/10; <b>SC14</b>
04/07/2010	S	Ought to Pass, MA, VV; OT3rdg; <b>SJ 13</b> , Pg.275
04/07/2010	S	Passed by Third Reading Resolution; <b>SJ 13</b> , Pg.282

04/14/2010	S	Enrolled; <b>SJ 14</b> , Pg.302
04/14/2010	H	Enrolled; <b>HJ 32</b> , PG.1587
05/10/2010	H	Signed By the Governor 05/07/2010; Chapter 0016
05/10/2010	H	I. Section 3, 5, 7 Effective 07/01/12
05/10/2010	H	II. Section 1 Effective 07/01/2010 at 12:01 a.m.
05/10/2010	H	III. Remainder Effective 07/01/2010

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NH House

NH Senate

Contact Us

*New Hampshire General Court Information Systems*  
107 North Main Street - State House Room 31, Concord NH 03301

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# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

HB 681 ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: Attachments 1 & 2

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

\_\_\_\_ - AMENDMENT # \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
\_\_\_\_ - AMENDMENT # \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED  AS AMENDED BY THE HOUSE  
 FINAL VERSION \_\_\_\_\_ AS AMENDED BY THE SENATE

\_\_\_\_ PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [ a thru g or a, b, c, d ] here: \_\_\_\_\_

EXECUTIVE SESSION REPORT

\_\_\_\_ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

7/22/10

Mary Cole  
COMMITTEE SECRETARY